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HUMAN RIGHTS COMMITTEE

Sixty-sixth session

SUMMARY RECORD OF THE 1762nd MEETING

Held at the Palais des Nations, Geneva,
on Friday, 16 July 1999, at 10 a.m.

Chairperson: Ms. MEDINA QUIROGA

later: Ms. EVATT

later: Ms. MEDINA QUIROGA

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The meeting was called to order at 10.20 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Fourth periodic report of Mexico (CCPR/C/123/Add.1; HRI/CORE/1/Add.12/Rev.1; CCPR/C/66/Q/MEX/1/Rev.2)

1. At the invitation of the Chairperson, Mr. González Felix, Mr. Arias Marin, Mr. Ampudia Mello, Ms. Morgan Sotomayor, Ms. Garza Hurtado, Ms. Sanchez Valderrama, Ms. Pérez Duarte y N. and Mr. Sánchez Gutiérrez (Mexico) took places at the Committee table.

2. The CHAIRPERSON welcomed the Mexican delegation and invited its members to introduce the fourth periodic report of Mexico.

3. Mr. GONZÁLEZ FELIX (Mexico), Ambassador, said that the fourth periodic report of Mexico (CCPR/C/123/Add.1) had been drawn up in accordance with the Committee's guidelines and gave an account of the progress made between 1992 and 1996. It was supplemented by an "addendum", which set out the measures taken by the State party since the submission of the report (document without a symbol circulated at the meeting in English and Spanish only).

4. He said that the Constitution and the federal laws of Mexico had been thoroughly revised in recent years. Thus, a judicial reform system had been set up in 1994 to ensure effectiveness, the independence of magistrates, the autonomy of judicial organs and the professionalism of judicial personnel, in particular by improving their qualifications and working conditions and making promotion subject to examinations and competitive procedures. The first step in that reform had been the creation on 2 February 1995 of the Federal Council of the Magistracy. In addition to the office of assigned counsel, the office of legal adviser had recently been created. The desire to dispense justice rapidly had led to an increase in the number of courts in certain states. In parallel to the ordinary courts, there were military courts with investigative powers, which based their decisions on the Code of Military Justice, generally stricter than ordinary law.

5. The Mexican Government was determined to combat impunity. Thus, over the previous two years, in addition to those who had been disciplined on the recommendation of the National Human Rights Commission (CNDH), almost 1,000 public servants had been dismissed, 1,139 had received minor punishment, and 317 had been prosecuted. During the same period, training programmes for officers of the Federal Attorney-General's Office and the federal judicial police had been stepped up.

6. There had also been considerable progress in the fight against torture: while in 1991 incidents of torture had been the most frequent cause of complaints to the CNDH (225 complaints in the period December 1990-June 1991), by 1998 they had been only in thirty-second place, with a total of 21 complaints in the period January-December 1998. Under the 1991 Federal Act to Prevent and Punish Torture (para. 123 of the report), a vast legal

framework had been set up and 28 people had been sentenced for committing acts of torture. President Zedillo had very recently reiterated his commitment to fighting torture in every possible way.

7. A new National Public Security Programme had been launched, and in August 1999 the President himself had called for a national campaign against crime and delinquency, with the participation of the Federal Government, the state governments and various civil society organizations.

8. On 8 June 1999, Congress had approved an amendment to article 102 of the Constitution, granting full financial and administrative autonomy to the CNDH. Henceforth, the President of the CNDH would be elected by the legislature for a five-year term renewable only once. He would report every year to the federal authorities. From its creation in 1990 to December 1998, the CNDH had received 66,085 complaints, of which 98.4 per cent had been settled, and had made 1,380 recommendations, of which 71 per cent had been implemented in entirety, 23 per cent had been implemented partially, and 3 per cent had been rejected. In 1998, 558 complaints had challenged decisions of human rights bodies or protested against their non-application. The CNDH was also conducting a number of programmes to combat impunity or assist various particularly disadvantaged or vulnerable sections of the population, and was providing training courses, particularly for public servants. Under the aegis of the CNDH, the itinerant judges service (Cuarta Visitaduría) had been set up in February 1998 to handle indigenous affairs: that service, which deserved special mention (paras. 634 and 635 of the report and the addendum), made it possible to speed up and improve the procedure for filing and investigating complaints concerning alleged violation of indigenous people's human rights. The CNDH had achieved the release of 802 people under its early-release programme for indigenous prisoners. It had also handled 417 complaint cases in the State of Chiapas and had sent 31 requests for preservation measures to the Government of Chiapas.

9. He added that one of the principal aims of the Government of Mexico had been to strengthen democracy and that hence political pluralism and transparency in electoral processes had become reality in Mexico. The major political parties had in 1994 signed a national political agreement which had laid the foundations for a better equilibrium between the three branches of government and had given greater autonomy to the states and municipalities. The desire of the Government and society to establish democracy on a firm foundation had also been illustrated by the fact that all the parliamentary groupings of the Congress of the United Mexican States had approved by consensus the amendments to the Constitution published in the Official Journal of 22 August 1996. Those amendments had modified the parameters of the make-up of the national representative bodies such that no party any longer had an absolute majority in the Chamber of Deputies. The legal conditions and the conditions laid down in the Electoral Code for a political group to become a national political party had been made more flexible and as a result the number of recognized national political parties had increased to 11 after the registration as political parties of six civil organizations meeting the new conditions. Political groups which were not recognized as political parties could, moreover, also participate in federal elections by signing a participation agreement with a political party and having the agreement registered by the electoral authority.

10. The Government of Mexico was giving very particular attention to the situation of the 10 million indigenous people, representing 10 per cent of the population of Mexico, spread across 24 states. Article 4 of the Constitution had been amended in order to recognize the multicultural composition of the Mexican nation, and various other federal and state documents had been revised in order to promote and protect the rights of indigenous people. In addition, the Government had taken advantage of a national referendum and the San Andrés Agreements to draw up new constitutional amendments on the subject, which were currently being examined by Congress together with other amendments proposed by political parties.

11. He assured the Committee that his Government was determined to fulfil its international obligations. Thus, 1997 had seen the foundation of the Intersecretarial Commission for the fulfilment of Mexico's international human rights obligations, which was responsible for coordinating the activities of different public bodies and presenting recommendations. Moreover, one of the objectives of the national development plan 1995-2000 was the protection and defence of human rights and the strengthening of the rule of law and the mechanisms for ensuring the respect of the rights laid down in the Constitution. In order to give effect to paragraph 71 of the Vienna Declaration and Programme of Action, the National Programme for the Promotion and Strengthening of Human Rights had been set up in 1998. Notably, it included campaigns against violence, torture, impunity and enforced disappearances, and the production of periodic reports, assessments and statistics.

12. The Government was also cooperating fully with international institutions, as demonstrated by the visits to Mexico by various United Nations representatives (in particular the High Commissioner for Human Rights). The Senate had recently approved ratification of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and the acceptance of obligatory jurisdiction by the Inter-American Court of Human Rights. The Intersecretarial Commission was also studying the possibility of Mexico's accession to other instruments and had recommended withdrawing some of the reservations laid down by Mexico when ratifying certain instruments.

13. The CHAIRPERSON thanked the delegation and invited it to reply to items 1 to 14 of the list of issues (CCPR/C/66/Q/MEX/1/Rev.2).

14. Mr. ARIAS MARIN (Mexico), replying to question 1 in his capacity as assistant coordinator for negotiation and dialogue in Chiapas, said that the San Andrés Agreement was not a definitive peace agreement but merely a partial agreement dealing exclusively with indigenous rights and culture and signed within the larger framework of complex negotiations between the Government and the Zapatista National Liberation Army, dealing with five areas: détente and disarmament, indigenous rights and culture, democracy and justice, social well-being, and the situation of indigenous women. Two points needed to be kept in mind: all the agreements were to be drawn up within the framework of the Constitution and preserve the unity of the nation, and all the commitments undertaken by the Government had to be endorsed by Congress. The substance of the San Andrés Agreement was to make provision for the recognition of

indigenous people in the Constitution, which had been done with the amendment of article 4, and the recognition of the indigenous peoples' right to self-determination. The dialogue had been unilaterally broken off by the Zapatistas because of a difference of interpretation on that point, the Zapatistas wishing to see self-determination for the indigenous inhabitants as a people and the Government considering that the indigenous inhabitants had historically been organized in communities and not as a people.

15. Turning to question 2, he said that the entire judicial system acted on the basis of the provisions of international instruments and that it was becoming common for magistrates to avail themselves of the provisions of the Covenant. As to the autonomy of the CNDH, the relevant bill had been approved in June 1999. Concerning the follow-up action taken by the CNDH, he said that it was carried out on a case-by-case basis according to the recommendations made and that 96 per cent of those recommendations were implemented.

16. Ms. PÉREZ DUARTE Y N. (Mexico), a member of the Permanent Mission of Mexico at Geneva, replying to question 5, said that equality between men and women was guaranteed by article 4 of the Constitution. Everyone knew, however, that documents were not enough to change ancestral traditions, common to all countries in one form or another. For that reason, the authorities had in recent years developed a large-scale gender-equality awareness campaign, and a national programme had been set up to try to end customs which discriminated against women. The measures taken in that context mainly concerned education (from primary to university level) and the media, and demonstrated the Government's desire to alter the image of the Mexican woman. The Government was also trying to meet the demands of women wishing to play a greater role in political decision-making in Mexico, especially within political parties, and other measures were needed to help women at the social level. There were at least 10 per cent of women occupying decision-making posts in the executive, judicial and legislative branches. In the highest court in Mexico, the High Court of Justice of the Federal District, women accounted for 32 per cent of judges, and they represented almost half of all judges in courts of first instance. The Senate included 17.2 per cent of women and the Parliament 17.4 per cent. However, as in all democracies, the proportion of women participating in the legislative bodies fluctuated over the course of time; in 1994, for example, the proportion of women members of parliament had risen from 17 per cent to 28 per cent.

17. The CNDH had re-examined the corpus of legislative standards in order to identify and eliminate deficiencies in respect of gender equality. That initiative had led to the publication of a 33-volume collection, available for consultation in the Palais des Nations library, of a series of proposed legislative amendments, which had been presented to the President of Mexico, who had consequently conveyed them to the governments of all the states of the Union. Those bills, intended to provide a full guarantee of gender equality, had already been brought before the legislative assemblies of certain states.

18. Regarding item 6 (a) of the list of issues, the scale of the problem of violence against women in Mexico could be described as comparable to that in the rest of the world, and the Government was sparing no effort to put an end to it. The Government was conscious of the need to break the wall of silence surrounding the issue of violence committed against women and to get to the

root of the problem. Violence against women was closely connected with domestic violence, and the procuratorial authorities in the different states had since 1988 been launching programmes and setting up specialist organs.

19. Regarding item 6 (b), the Mexican delegation was unfortunately unable to provide figures for the number of cases of rape reported for the country as a whole since the state procuratorial authorities were not required to forward those statistics to the Federal Government. That being said, the work carried out over the past decade, and more particularly under the National Programme for Women and the National Programme against Domestic Violence, the latter of which had been launched the previous year, had led to greater reporting and punishing of rape than in the past. Moreover, judges tended to impose heavier penalties for rape than for other crimes of comparable gravity. Another important aspect was that, in Mexico, rape happened largely within the family. In order to stop violence against women and violence in general, it was essential first to tackle domestic violence, and the authorities were trying to take measures in every aspect within their remit. In particular, the Federal Government had organized in 1998, in collaboration notably with UNICEF, a training course on domestic violence for magistrates of the courts and the prosecution service in order to ensure full adherence in judicial procedures to the provisions of the international human rights instruments to which Mexico was party. However, under Mexican law all punishments had to be legislated for, and, since domestic violence was not considered a crime, judges had previously been reluctant to penalize it. Since the training courses and also as a result of pressure from civil society for justice to be administered, the magistrates' attitude had, however, changed.

20. Regarding item 6 (c), the authorities had set up teams responsible for training the police in dealing with victims of domestic violence or crimes endangering psychological or sexual stability.

21. There was no law on domestic violence (item 6 (d)), but the CNDH Rights had, in the study mentioned earlier, put forward proposals for the reform of the civil and penal codes in order to combat that problem. The legislation had already been amended in certain states, and the authorities hoped that by the end of the year all the states of Mexico would have completed the reform of their civil and penal codes in that area.

22. Concerning the problem raised in item 6 (e), that was another area in which the Committee could usefully refer to the study published by the CNDH, which had drawn up recommendations for improving the relevant situation. Child prostitution and the use of children in pornography had not previously been an offence but were now punishable under the Penal Code.

23. Mr. ARIAS MARIN (Mexico), replying to the questions in paragraph 7 of the list, said that the greatest number of complaints connected with the existence of paramilitary groups had been registered in the state of Chiapas. Giving a brief résumé of the context, he said that in the 10 days after the uprising by the Zapatista National Liberation Army (AZLN), the Government had declared a unilateral ceasefire and had entered into negotiations with the AZLN, a process which had then become institutionalized. As the Committee would be aware, that negotiation between a government and a guerrilla group was unique in Latin America; it was based on a law which had been adopted by

all the parties represented in Congress. However, the greatest danger for the population of the state of Chiapas was presented not by a potential confrontation between the Governmental armed forces and the AZLN, but rather by collateral violence committed within or between communities, between "anti-Zapatistas" and "pro-Zapatistas". In Chiapas there were armed groups of civilians representing each of those tendencies. The problem was a serious one, because it had caused a rupture of the social fabric, going far beyond the traditional conflicts over land ownership, religion or politics. People who did not subscribe to the majority attitude in their communities towards the Zapatistas were expelled, and retaliatory blood crimes within or between communities, which admittedly had always existed, had now reached alarming proportions.

24. The situation in the state of Chiapas was serious and the Zapatista uprising had, unsurprisingly, created a climate of violence. There was a great deal of trafficking in arms, largely from Central American countries, and communities were arming for their own defence. In that connection, he mentioned the tragic events which had taken place in the village of Acteal, following on from the serial murders of 22 people. The most likely hypothesis by those appointed to investigate the Acteal killings pointed to vengeance by groups provoked by the aggression which had preceded. It was important to understand that that type of violence, which affected a large number of communities in Chiapas, in particular those where AZLN influence was strong, was the product of a very complex mechanism. The Government had taken measures to try to put a stop to it at a local level, notably by encouraging communities to surrender their weapons and by asking the Zapatistas to cooperate in that. To date, since the dialogue with the AZLN had been suspended, the measures had not produced all the results expected, but the federal authorities were convinced that the problem could not be solved without effective political participation by the AZLN.

25. Mr. GONZALEZ FELIX (Mexico), adding to what Mr. Arias Marin had said, assured the Committee that the CNDH was following very attentively all questions relating to allegations of torture, disappearances and extrajudicial executions in Mexico. Contrary to what was suggested in item 7 of the list of issues (CCPR/C/66/Q/MEX/1/Rev.2), there were no paramilitary forces in Mexico. Regarding the investigations, the Mexican delegation had that morning submitted to the Chairperson of the Human Rights Committee a document containing full information on that subject. He added that, as far as acts of torture were concerned, the measures taken over the last decade or so had led to an appreciable reduction in the number of such violations, which were duly punished under the law. In a number of cases, the perpetrators had been sentenced and in a few cases the victims had been compensated by the civil courts.

26. In the matter of alleged disappearances, the authorities had in 1992 registered 25 reports of that type of occurrence; in three cases, the individuals had been found alive and in 10 cases they had been found dead. In 1993, there had been 32 reports, 18 persons found alive and 6 found dead. In 1994, there had been 37 reports, 14 persons found alive and 12 found dead. In 1995, there had been 39 reports, 31 persons found alive and 3 found dead. In 1996, there had been 37 reports, 27 persons found alive and 9 found dead. In every case where a person who had allegedly disappeared had been found dead,

the authorities had launched an inquiry. On the question of extrajudicial executions, likewise, the Committee would find precise information in the previously mentioned document on the measures taken by the authorities to deal with the issue. In general, the Government was demonstrating particular vigilance and examining the situations case by case.

27. In response to item 8, he referred the Committee to the same document, which provided an analysis of all reported cases, together with statistics and percentages. Summing up, he said that the number of cases of torture could be seen to be decreasing and the number of penalties growing. However, it was very clear that the Government would not leave it at that and intended to put a complete stop to the practice of torture.

28. Ms. PÉREZ DUARTE Y N. (Mexico) said, in reply to question 9, that the relevant law had already been modified some time earlier and that, in order for a confession to be accepted as admissible, it had to be accompanied by various other corroborating evidence. Under the penal system, when no other information supported a charge, confessions were dismissed and the defendant had to be released. If there was evidence in a case to show that confessions were not sufficiently reliable to be accepted, the court based its judgement on that other evidence. In cases where the confession had been extracted by torture or by other coercive means, the judicial system provided for the judgement to be reviewed, in order to avoid the practice of torture for the purposes of obtaining confessions, and whatever the crime. It was true that Mexican public opinion continued to denounce the use of torture to obtain confessions, but she assured the Committee that magistrates now took care to ensure that confessions were not accepted where there was no corroborating or supporting evidence. The law was very strict in that respect, and it was applied.

29. Concerning item 10, the reform referred to had been adopted on 8 February 1999 and it was thus too early to know its practical effects. The reform had been criticized on the grounds that it had extended the powers of the police in cases of flagrante delicto. In reality, it was intended to achieve precisely the opposite, by restricting those powers exclusively to cases where the perpetrator of the offence was caught red-handed or exposed by the victim or a witness. In those cases, the suspect was required to be arrested within 48 hours of the offence and legal proceedings were automatically instituted. However, that procedure only applied to serious offences.

30. Mr. AMPUDIA MELLO (Mexico), Ministry of the Interior, replying to the questions in paragraph 11 of the list, said that 139,707 persons were currently in prison in Mexico, 42.27 per cent of them in pre-trial detention. The average duration of pre-trial detention was 14 months, which corresponded to the average length of judicial proceedings.

31. In reply to the questions in paragraph 12, he said that chapter 11 of the regulations for federal detention centres, a copy of which was available to the Committee, laid down the circumstances in which penalties could be applied to prisoners and the procedure to be followed. It also listed the remedies at the disposal of prisoners. To return to the question asked by the Committee, it ought to be mentioned that under the detention regulations,

penalties were applied by the Interdisciplinary Technical Board in each prison. That body consisted of prison officers and specialists in various fields, particularly psychologists involved in prisoner rehabilitation. The penalties could be reviewed and were applied after the Board had heard the prisoner's point of view. Under article 217 of the regulations, the decision had to be notified in writing to the prisoner concerned in order that he could challenge it if he wished. Article 218 authorized the prisoner to appeal against the Board's decision to the Directorate-General for Social Rehabilitation. In the final resort, it was possible to complain to the Human Rights Commission at the national or state level. The disciplinary sanctions envisaged consisted of reprimanding the prisoner in private or in public, partially or totally depriving him of visits from family members or other persons, moving him to another dormitory or transferring him to a special section.

32. Mr. GONZALEZ FELIX (Mexico) said in reply to the questions in paragraph 13 that, at the present time, at all stages of the judicial process, the authorities concerned had access to a service responsible for ensuring that prisoners' human rights were respected. In addition, the CNDH had access to the case file of anyone being prosecuted. What was more, anyone who considered himself the victim of arbitrary detention or a judicial error could submit a petition of habeas corpus. The most important reform of recent years had been the incorporation into the Civil Code of provisions allowing persons who had been subjected to arbitrary detention to claim damages from the State. In that connection, Mexico had entered in regard to the International Covenant on Civil and Political Rights a reservation concerning provision for compensation in cases of arbitrary detention. Since compensation was now provided for by the Civil Code, there was no longer any justification for that reservation and consultations on its withdrawal were under way.

33. Mr. AMPUDIA MELLO (Mexico), replying to the questions in paragraph 14 of the list, said that the measures taken by the local and national authorities to reduce the prison population had been made possible by the law on the minimum rules for social rehabilitation, which fixed criteria and methods in respect of early release of prisoners. Various special programmes had been set up by the relevant public bodies in order to facilitate the early release of prisoners, especially those belonging to vulnerable groups, such as indigenous persons and individuals responsible for supporting poor families. Additionally, under the National Public Security Programme, particular attention was being devoted to renovating prisons. The sums being spent on improvement and extension of prisons in 1999 amounted to 700 million pesos.

34. Regarding action to combat alcoholism and drug addiction in prisons, the Mexican authorities, together with a number of social organizations, were making an effort to ensure that the rules were followed not only by prisoners but also by prison staff. Disciplinary measures were regularly taken against prisoners violating the rules. Likewise, any violation by those in charge and by prison staff was severely punished. Thus, in 1998, 317 prison officers had been disciplined and 217 of them had even been prosecuted.

35. The CHAIRPERSON invited those members of the Committee who so wished to address oral questions to the Mexican delegation.

36. Mr. SOLARI YRIGOYEN, after paying tribute to Mexico for its role as a country of asylum, said that the fourth periodic report of the State party showed that positive changes had taken place since consideration of the previous report. The human rights situation was now the object of constant monitoring both at federal and local level as a result of the work of various public servants who had been nominated in recent years. The police forces had been purged and provisions prohibiting torture incorporated into the Penal Code; the jurisdiction of the Inter-American Court of Human Rights had been recognized in 1998 and the Government had pledged to abide by its decisions. Profound changes had been made to the electoral system to allow free and democratic elections. The rights to freedom of expression and association were now widely respected. The creation of the National Human Rights Commission was an extremely important step even if the CNDH did not yet enjoy full independence. Finally, it was gratifying that the United Nations High Commissioner for Human Rights had been invited to visit Mexico.

37. The changes were certainly important, but they should not obscure the fact that the situation remained very worrying, as demonstrated by the numerous complaints from persons whose credibility could not be doubted. Attacks on the right to life as well as the right to liberty and security of person continued to be committed. There were frequent cases of unlawful detention. It also had to be noted that extrajudicial executions had not ceased. The explanations given by the Mexican delegation were inadequate, for in many cases they were premeditated massacres. There was also the problem of enforced disappearances. The delegation had declared that the number had fallen and that certain cases had been cleared up. But information from other sources gave a quite different picture and the Committee had a long list of names of people found dead after having been reported missing.

38. It was gratifying that the report emphasized the problem of torture, a practice which, to cite the Universal Declaration of Human Rights, outraged the conscience of mankind and for which there were no mitigating circumstances. On the other hand, certain types of behaviour on the part of the judicial authorities gave rise to grave concern. Agents of the State seemed to enjoy total impunity and that was also the case for certain elements of the army, who carried out policing activities in regions which were home to indigenous populations, as well as paramilitary groups which held sway in Chiapas and other provinces. The Government's decision to allow the International Commission of Jurists to visit Mexico to investigate the situation in certain regions was to be welcomed, but certain rules meant that numerous human rights organizations continued to be refused access.

39. Mexico had made firm commitments to its population and the rest of the world to respect human rights. Those commitments should now find expression in laws and regulations, and in the behaviour of the public authorities. Arguments based on real or imagined facts were often invoked to justify practices incompatible with human rights. It should be reiterated that, whatever the situation in a country, nothing could justify human rights violations by a Government.

40. Ms. Evatt took the Chair.

41. Ms. GAITAN DE POMEO inquired about the impact of the 1994 electoral reform given that in Mexico power had long been in the hands of a single party and the communication media had been a State monopoly. Were the mechanisms in place sufficient to make the electoral process more transparent, in conformity with the requirements of article 25 of the Covenant? On a more practical level, how were the different parties' candidates in the presidential elections designated and what effect did polls have on the electoral process?

42. Regarding measures designed to put an end to torture, the Committee was interested in knowing what had happened to the thousand or so State agents who had been dismissed. Additionally, an increase or decrease in the number of complaints was not an accurate yardstick of the scale of the problem, for often the victims did not dare complain because they did not trust the institutions. Given that torture was an offence under ordinary law, what procedure was followed when the alleged perpetrators of acts of torture were military personnel or police officers? Enforced disappearances were another problem whose scale could not be measured by the number of cases reported. It would therefore be interesting to know how many inquiries into cases of disappearance had been carried out by the Office of the Public Prosecutor and by the CNDH. What progress was the ratification of the Inter-American Convention on the Forced Disappearance of Persons making in that respect? The Committee would also like to know whether the Special Programme for Presumed Missing Persons could inquire into cases of disappearance or whether it limited itself to merely passing them on to the authorities. Were its decisions, where appropriate, binding? More information would be welcome on the follow-up to the proposal to make that programme into an independent body.

43. Finally, she wished to know whether the issue of the death penalty was the subject of public debate in Mexico and whether the State party was planning to sign the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at abolition of the death penalty, given that that penalty, which was provided for in the Mexican Constitution, was no longer applied.

44. Mr. YALDEN said that, if the Mexican delegation did not have the necessary information to reply immediately to the questions he wished to ask, it could reply later in writing.

45. The San Andrés Agreement was undoubtedly a historic document, but, unfortunately, there were obstacles hindering its application and the continuation of negotiations. The Committee had taken note with interest of the information that a new initiative for cultural and linguistic self-determination by the indigenous populations was pending in Congress. He would be glad to receive the text of that bill.

46. Regarding the reform of the CNDH, he would appreciate more information on the measures intended to increase its independence. In particular, he wished to know by whom and by what means the three candidates to the CNDH presidency were nominated and whether the president could be removed from office and, if so, in what circumstances. Of the 66,000 complaints filed with the Commission since its founding, a large number, according to the Mexican delegation, had led to a conclusion. What exactly did that mean? The delegation had mentioned agreements between the CNDH and the relevant public

bodies, but there was no indication of the measures taken to satisfy the person whose rights had been violated. Was there any provision for compensation? The same question applied to certain complaints by specific groups, such as indigenous persons and women. Furthermore, since it seemed that the CNDH was only empowered to make recommendations, what happened when they were not followed? The Committee would welcome details of the CNDH's remit and particularly of its role in respect of complaints against members of the armed forces.

47. Women were, according to numerous sources, under-represented in high-ranking private-sector posts and were generally paid less than men for equal work. What exactly was the situation in that regard?

48. Ms. Medina Quiroga resumed the Chair.

49. Mr. WIERUSZEWSKI said that the additional information provided by the State party would have made easier reading if it had been presented in accordance with the Committee's guidelines. Nevertheless, the information given went a long way to explaining a complex situation. Additionally, the increasingly cooperative attitude of the Mexican authorities towards the various United Nations human rights mechanisms was to be welcomed. It was gratifying to note that special rapporteurs had been able to visit Mexico and that the High Commissioner for Human Rights had been invited. All those measures, which showed that the Government of Mexico was now taking its international commitments very seriously, were promising in terms of the future of human rights in Mexico. Unfortunately, though, not everything was positive.

50. In its presentation, the Mexican delegation had mentioned efforts to put an end to impunity and had cited in particular a new National Public Security Programme. According to information supplied to the Committee, that programme was based on a special law authorizing the armed forces to participate alongside the police, under a single command structure, in the suppression of criminal activity linked, for example, to terrorism and drugs trafficking. The Committee had also been informed that that law, which authorized military personnel to carry out inquiries and arrest suspects, had been judged by the Supreme Court to be in conformity with the Constitution as long as the units in question were under the supervision of the Office of the Attorney-General. The Committee wished firstly to know whether the National Public Security Programme mentioned by the State party's delegation was the same programme that had been launched in 1995. Also, what was the mechanism by which the civil authorities exercised control over military personnel who took part in police operations, especially given that various sources feared that army participation in those operations considerably weakened the judicial safeguards which suspects should enjoy? It would also be useful to know whether any violations committed by military personnel belonging to the relevant units fell within the jurisdiction of the civil courts or of military tribunals, for it was known that the latter tended to look with greater indulgence on crimes committed by military personnel. Finally, had anyone already been prosecuted or tried under the law establishing the National Public Security Programme? Since the programme was intended to combat impunity, it was to be hoped that those implementing it would not be above the law.

51. Like the earlier speakers, he was concerned by the problem of torture. The addendum to the fourth periodic report, which the Mexican delegation had had distributed to the Committee in English and Spanish, provided in the section dealing with article 7 a list of requests for investigation submitted to the CNDH between May 1997 and December 1998: the principal violation among those mentioned was torture. Of the 18 cases listed, 14 were described as "partially resolved", the four remaining cases being fully resolved. Did the term "partially resolved" mean that the cases in question would subsequently go to ordinary judicial review? It could be regarded as surprising, in fact, that such complaints were examined by a body such as the CNDH.

52. Again with respect to the application of article 7, he, like the earlier speakers, referred to the problem of the shortcoming in the Mexican penal procedure system which failed to provide for effective judicial supervision during the investigation period when the suspect was in custody and during his examination. The statement made to the Office of the Attorney-General before the arrested person was allowed to contact his lawyer opened the way for torture and other violations of rights protected under article 7. Was the Mexican Government aware of that situation, and what was it doing to protect detained suspects' rights during that period?

53. Concerning disappearances, the information provided in the addendum distributed by the delegation (p. 9 of the English version) gave an account of the Special Programme for Presumed Missing Persons (paras. 109-113 of the report) which had been carrying out the necessary investigations to discover the whereabouts of persons reported as missing, something he found puzzling. He would wish for more information on that programme, which was run by the CNDH. How could a body such as the CNDH be responsible for such functions, and how could it carry them out effectively? Why was the crime of enforced disappearance not included in the Penal Code? What had happened regarding the six recommendations made by the CNDH concerning the Special Programme for Presumed Missing Persons (para. 113 of the report)?

54. Mr. KLEIN said that he had noted the delegation's declaration that the Mexican courts referred to the provisions of international instruments, but it was regrettable that no specific example from case law had been provided. He wished to know whether there had been cases where a provision of the Covenant had been invoked, in accordance with article 133 of the Constitution, but without result because it was incompatible with the latter.

55. In connection with items 7 ff. of the list, concerning the application of articles 6, 7, 9, 10 and 14 of the Covenant, he was also concerned by the military participation in law enforcement functions and activities, especially taking account of the differences between the military and the civilian police in terms of criminal responsibility. Military personnel were judged by military tribunals and, according to the information available to the Committee, it would appear that they were thus guaranteed virtual impunity, which was worrying from the point of view of the Covenant.

56. The Mexican authorities were fighting the practice of torture, according to the delegation. It was clear to everyone that the most dangerous period for a newly arrested person was the first few hours between arrest and appearance before the judge: article 9 of the Covenant provided that the

latter should happen as promptly as possible. In Mexico, there could be a delay of from 48 to 96 hours, in certain special cases, before the suspect was brought before a judge. That was not consistent with article 9 of the Covenant and he wished to hear what the delegation had to say on the subject. He wished to know the precise procedure which followed an arrest: did the detainee have the right to contact a lawyer immediately after arrest? According to his information, that was not the case. Was he allowed to see members of his family and, if so, from what stage? That was important in order to avoid incommunicado detention.

57. Concerning paragraph 9 of the list, he wished to know who was required to prove that a confession had been extracted by means of torture. Did the burden of proof lie with the defendant? How was the right to a fair and public trial guaranteed in Mexico? According to the information available to the Committee, hearings in Mexico were not always public: on occasion the public was kept at quite a distance from the judge and even separated from the judge, the prosecutor and the defendant by a glass partition. Did the Mexican delegation consider that to comply with the requirements of article 14? Finally, concerning the security forces, it appeared that judgements were neither made public nor published. Was that correct, and did it comply with article 14?

58. Lord COLVILLE said that he wondered about the value of confessions in connection with the written question in paragraph 9 of the list. He wished to know whether the Federal Act to Punish and Prevent Torture, cited in paragraphs 123 and 125 of the report, was applicable in all the states of the Federation, for, if that was not the case, it presented a serious problem in relation to the Covenant. Regarding torture, it was beyond doubt that there was a real danger in the period immediately following the arrest of a suspect, for the police or the investigating authorities had a tendency to try to extract confessions by force or torture. That was why judges had to exercise extreme vigilance in the matter of confessions, which of course did not automatically have probative value. It was for the judge to determine the weight to be given to a confession.

59. In that connection, he wondered what happened when an arrested person made a confession and later announced that it had been extracted by torture. If he understood correctly, under the Mexican penal procedure, an initial statement or deposition had more weight than potential later modifications or retractions. If that was the case, it made it extremely difficult for a defendant who had been questioned and made a confession which he had subsequently retracted to prove that his confession did not represent the truth. In order to reach an opinion on the implementation of the Covenant, the Committee needed to know who was required to prove what, in other words whether the prosecution had to prove that the confession had not been extracted by means of torture or whether the judge required the person who had confessed and then retracted the confession to prove that it could be retracted. If the second scenario was true, it had to be concluded that Mexican law provided no protection to a person who had been tortured in order to force a confession. The delegation would have to explain to the Committee how judicial procedures worked in such cases.

60. Lastly, he wished to know whether a person charged with an offence automatically had the right to be present at the hearing of his case or whether he had to make a request to attend. The second scenario would be a violation of article 14 of the Covenant.

61. Ms. CHANET thanked Mexico for having submitted the fourth periodic report in comprehensive and timely fashion and said that she had appreciated its oral presentation supplemented by useful additional documents. The Committee had a plethora of texts, but no real information on their practical application.

62. Her first question could be viewed in relation to paragraph 15 of the list, in which the State party was asked whether it had any particular reason for maintaining the reservation to article 13 of the Covenant, but in fact it applied to all the reservations and interpretational declarations made by Mexico concerning articles 9, 13, 18 and 25 of the Covenant. What was the Government's position on those reservations and interpretations as a whole?

63. Her second question concerned the application of article 4 of the Covenant and the state of emergency. According to paragraph 76 of the report, no state of emergency had been declared in Mexico during the period under review. She felt it was necessary to define what was meant by "state of emergency". There could arise in any place situations of exceptional public danger in which the Covenant authorized the Government to derogate from certain articles upon making a declaration to that effect to the Secretary-General; that procedure allowed the Human Rights Committee to check on the application of article 4. In the case of Mexico, it was clear from the situation that the State could be in a position to apply article 4, but the report said that a state of emergency had not been declared during the period under review. For example, it would appear that in one part of Mexico, the state of Chiapas, article 14 of the Covenant was not being applied: apparently trials were not public and there were checkpoints, unlike in other parts of the country. Why had a de jure state of emergency, which was not prohibited, been substituted by a de facto state of emergency, which in reality was beyond all control, including that of the citizens?

64. Concerning the application of article 6 of the Covenant (the right to life), she had been informed that a bill to make enforced disappearance a criminal offence had been submitted to the Senate and wished to know what the exact situation was in that regard.

65. Concerning the application of article 9, and more particularly police custody and arrest, she associated herself with the comments made by other members of the Committee. The amendment to article 16 of the Constitution provided for arrests other than by warrant issued by a judge and had considerably broadened the scope for the Office of the Attorney-General, in other words the public prosecutor, a representative of authority, to issue arrest warrants in "urgent" cases. What was an urgent case? What criteria were applied in practice to define such cases and avoid arbitrariness? Moreover, she found strange a recent definition of flagrante delicto: for her, it meant a criminal act which should be evident (manifest) or in the process of being committed. Yet the Code of Penal Procedure defined as flagrante delicto as the fact of carrying an object about one's person, having

been seen by a witness, committing a serious crime or being accused by a co-defendant. She could not see where the flagrancy lay in those cases. That would not be so serious if the flagrante delicto regime was not so restrictive, providing for police custody lasting up to 96 hours, which did not comply with article 9.

66. Regarding police custody, she wished to know the details of that particular period in terms of the presence of a lawyer, contact with the outside world and contact with a doctor. It appeared that in Mexico the doctor who examined the detainee was appointed by the State and carried out a medical examination before the detainee was questioned. All of that raised issues regarding the conformity of Mexican legislation with article 9.

67. Mr. POCAR welcomed the Mexican delegation and said that its members were particularly well qualified to reply to the Committee's questions. He thanked the delegation for the useful information provided orally, which had allowed the Committee to gain an idea of the steps taken to guarantee the rights laid down in the Covenant. Two improvements ought to be particularly emphasized: the independence granted to the CNDH and the reply concerning the reservations to the Covenant entered by the State party.

68. Firstly, he wished to question the delegation about impunity in its various forms. He was concerned by military justice, for the report of the Commission on Human Rights' Special Rapporteur on torture (E/CN.4/1999/61) showed that military personnel in Mexico were never brought before civil courts and that they were generally protected from proceedings in military courts. He wished to know more about that. Under article 13 of the Constitution, military courts tried only breaches of military discipline. What did that mean in practice? Did the jurisdiction of the military courts extend to charges of human rights violations by military personnel? Members of the military who were accused of having participated in acts of torture, forced disappearances or arbitrary or other executions should be tried by the civil courts. That was why he wished to know the precise jurisdiction of the military courts. He considered that particularly important in view of the fact that in Mexico the army was heavily involved in activities which were normally the domain of the police or other bodies responsible for upholding the law. As part of the same question, he wished to know the degree to which members of the armed forces and the police were answerable to the public prosecutor or the Office of the Attorney-General, in other words the investigating authorities. For it appeared that public prosecutors were often negligent when it came to prosecuting members of the police or the military who had been accused of human rights violations. He also asked the delegation to indicate the extent to which the police participated in judicial inquiries, for he believed that there were a number of problems in Mexico in that connection.

69. Concerning the activities of paramilitary groups, which were known to be operating in Mexico, he believed that the authorities, particularly the security forces and the local authorities, were demonstrating a certain laxness towards them. It would appear that the reasons for such a situation lay in the lack of law enforcement institutions. What measures were the Mexican authorities planning to take in the near future to remedy that state of affairs?

70. His last question concerned torture. Associating himself with what had been said previously by other members of the Committee, he asked the delegation to clarify its earlier statement that when a confession represented the only evidence, it could not be used against the defendant. However, he had also gained the impression that, where a confession had been extracted by means of torture, greater weight had to be given to the rest of the evidence. He would be glad of clarification of the matter in order to be sure that confessions extracted by means of torture had no value at all.

The meeting rose at 1.05 p.m.

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Sixty-sixth session

SUMMARY RECORD OF THE 1763rd MEETING

Held at the Palais des Nations, Geneva,
on Friday, 16 July 1999, at 3 p.m.

Chairperson: Ms. MEDINA QUIROGA

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GE.99-43068 (E)

The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 COVENANT (agenda item 4) (continued)

Fourth periodic report of Mexico (continued) (CCPR/C/123/Add.1)

1. At the invitation of the Chairperson, the members of the delegat Mexico resumed their places at the Committee table.

2. Mr. AMOR said he had found the report particularly full and well-documented, although it would have benefited from more references actual situation in the country. That would have avoided the impressi there was a considerable discrepancy between theory and practice.

3. On the question of the position of the Covenant in Mexico's hier laws, he would like to know whether the statement in paragraph 2 that international treaties constituted the supreme law of the nation impli the Covenant had the same status as the Constitution. Paragraph 3 app suggest that human rights instruments had some kind of supra-constitut status. Paragraph 4 stated that the Covenant was consistent with the Constitution, which if true had considerable implications in terms of protection of human rights. With reference to paragraph 7, if human r commissions were "organs of constitutional rank", how did their compete compare to the competence of judges?

4. He understood that article 33 of the Constitution had been amend that Mexico's reservation to article 13 of the Covenant was being with He was nevertheless somewhat concerned to see how foreigners could be under Mexican law. Not only could individuals be expelled without rig recourse to the courts, but also organizations, including NGOs which w visiting the country to carry out human rights investigations. Had th Administration taken any steps to facilitate the task of NGOs, notably areas where there were conflicts involving indigenous people?

5. He noted from paragraph 253 of the report that a refusal to issu passport could be justified not only if the applicant was subject to a judicial constraint, but also if he was subject to "an administrative impediment". Did that mean that a Mexican citizen could be permanentl deprived of the right to a passport because of such an impediment?

6. He was aware that the Mexican authorities were doing a great dea improve the situation of women, but that tradition and religion still serious obstacles. In addition to the requirement that political part put forward a certain proportion of women candidates, had any affirmat action measures been taken to promote women's advancement, notably in field of education, including religious education?

7. Like his colleagues, he was concerned at the interpretation give flagrancy under Mexican law: in his view, flagrancy with deferred eff not tenable as a legal concept. He had been particularly struck by th apparent impunity of paramilitary groups in Mexico, and by the confusi between the powers of the police and the armed forces. He would have

glad of further information in response to paragraph 7 of the list of issues, since unfortunately there had not been time to consider in depth the addendum provided. Concerning the problem of torture, he was aware that the Mexican authorities were making considerable efforts to ensure better protection of human rights in that respect, but often political will was not enough, and he would be glad to know more about the actual situation.

8. Ms. EVATT thanked the Mexican delegation for its report and for the additional information provided. She felt bound to say that although the report was long, in her view it did not strike a proper balance between legal measures enacted and actual problems encountered in their implementation. Neither the report nor the addendum gave an adequate response to the concerns that had been raised by the Committee at the time the third periodic report had been examined.

9. On the question of remedy, she would like to know whether Covenant rights had ever been applied by the courts to override the law. It had been stated that consideration was being given to ratification of other international instruments. Did that mean that Mexico might also ratify the Optional Protocol to the Covenant?

10. Members of the Committee had expressed concern at the high level of violence in Mexican society and at the impunity of the security forces. Failure to act against such abuses contributed to a lack of confidence in law enforcement mechanisms. Women in Mexico appeared to be particularly vulnerable to such abuses. The delegation had claimed that the level of violence against women was no different from that in other countries, but according to a report of the Inter-American Commission on Human Rights, they were victims of serious maltreatment by State officials and members of the security forces, particularly in prison, where they were subjected to rape and torture. What specific measures were being taken to ensure that women were not abused in detention and that they were not intimidated against reporting it? Had any punitive measures been imposed in respect of such abuses?

11. The Committee was also concerned at reports of abductions and murders of women in a particular area of the State of Chihuahua. It seemed that the Government had responded by publishing notices in the media instructing women not to dress provocatively. A few arrests had been made, but the murders had continued and many remained unresolved. Article 9 of the Covenant required the State party to make effective the right to personal security, and she would like to know what steps had been taken to ensure that women could live safely in that area, to investigate abuses and to enforce the law. Was it the view of the Government that a particular mode of dress deprived people of their right to the protection of the law?

12. On the issue of discrimination in employment, reports had been received that the practice of testing women for pregnancy as a condition of employment was widespread. That practice clearly violated articles 17 and 26 of the Covenant, but it seemed that no inquiries had been carried out. Vaccination to prevent pregnancy and other intrusive examinations of women employees had also been reported. What was being done to prevent such practices and to prosecute those responsible?

13. Mr. LALLAH said there was no doubt that substantial progress had been made since the Committee had considered Mexico's previous report. However, there had unfortunately been regression in certain respects, notably the militarization of the security forces, a deterioration in the administration of justice and a decline in the physical protection of individuals.

14. Article 129 of the Constitution stated "In peacetime, no military authority may exercise any functions other than those directly connected with military discipline". That implied that the armed forces were clearly differentiated from the police. Given the legislation enacted in 1995, however, it was a perversion of democratic governance to give wide powers to the military, which was not answerable either to the people or to the Judiciary.

15. Concerning the administration of justice, he welcomed the work that was being done by the National Human Rights Commission. However, he wondered whether the Commission did not to some extent detract from the effectiveness of the Judiciary by offering what was in effect a second-class remedy, being empowered only to make recommendations and not to enforce the law. There had been much criticism of the lack of independence of prosecutors and of the misfeasance of the Judicial Police in Mexico. Could not thought be given to the creation of a fully independent mechanism to which individuals could resort in the face of such abuses?

16. Concerning regression in the administration of justice, he considered that the concept of "flagrante detention" was a legal fiction, highly destructive of the protection afforded by the Covenant whereby detained persons had the right of access to a lawyer and the right to impartial and competent judicial control. He understood that in the course of trials in Mexico judges often did not attend in person, but left it to court secretaries to record the proceedings for subsequent review: that did not seem to offer much guarantee of a fair hearing.

17. Lastly, he was concerned at reports that three journalists had been murdered over the past year. Journalists seemed to have become a favourite target, and he would appreciate more information.

18. The CHAIRPERSON invited the delegation of Mexico to respond to the questions raised.

19. Mr. SANCHEZ GUTIERREZ (Mexico) said that until a few years before the electoral system had been the subject of justified criticism, not only within Mexico but in international forums. However, significant changes had recently been introduced. In the election of 1994 a single party had received 54 per cent of the public resources allocated to campaign activities, whereas in 1999 the distribution of resources between the three major parties had been 33 per cent, 26 per cent and 25 per cent. That showed that political parties had had access to public funding on a much more equitable basis since the reforms of 1996.

20. In reply to the question on access by political parties to the media, he said that since 1996 parties had been able to buy media time on a long- or short-term basis, as well as "spots" on radio and television. The Federal

Electoral Institute was compelled by law to monitor the programmes of political parties, and to ensure that their campaigns gave the public the necessary information. In 1996, party political broadcasts had been made on 17 radio stations out of 1,350 existing in the country, and on 3 television channels: in 1999 they had been made on 240 radio stations and 60 television channels. That ensured greater competitiveness between parties.

21. Until a few years previously, 32 of the states of the Republic had been governed by a single party: today, 11 were governed by opposition parties, which meant that one third of the country, containing more than 40 per cent of the population, was no longer governed by one party. Another effect of the reform had been that since 1997 no party had held an absolute majority of seats in Congress.

22. There was now greater confidence in the election process, and in recent years election results had not been challenged by any of the political parties, either in federal or local elections. The Federal Electoral Institute had powers to monitor party political expenditure in order to ensure that public funding made available to advance democracy in Mexico was not used for other purposes. Since 1994, ceilings had been put on campaign expenditure, in order to ensure fairer competition between the parties.

23. As to remaining obstacles to the electoral process, the Chamber of Deputies and the Senate were now considering ways of monitoring pre-campaign expenditure, allowing more time for campaigns and improving facilities for voters. The selection process was not controlled by the Institute, but it should be noted that the PRI party had reformed its statutes to ensure that candidates were selected following public consultations, and other parties would soon be introducing similar reforms. Concerning the issue of public involvement in politics, six more political parties had recently been registered, which meant that the public would now have more choice. However, the new parties would only survive if they received a minimum of 2 per cent of the vote at the forthcoming election.

24. Ms. PEREZ DUARTE (Mexico) said that jurisdiction in cases of torture was twofold. At the federal level, torture was punishable under the 1997 Federal Act to Prevent and Punish Torture. Torture was also an offence under certain state criminal codes and other states had enacted specific legislation to prevent torture. The legislation invoked in a particular case depended on the authority that was deemed responsible.

25. The Constitution stipulated that an arrested person must immediately be brought before the competent authority, which was the Public Prosecutor's Office when a person was held in police custody. That Office, having conducted its preliminary investigation, referred the detainee to the judge, who, within 72 hours, would decide whether to issue a detention order or an order of release.

26. Detainees enjoyed all the guarantees provided for in article 9 of the Covenant, which were reflected in articles 14, 16 and 20 of the Mexican Constitution. Contacts with a lawyer or other person designated by the detainee for his or her defence and with family members took place immediately; that was a right protected by both federal and state human rights

commissions. Legal assistance was assigned by the State where necessary. Officials in remote areas who still prevented detainees from contacting family members or lawyers were in breach of the law.

27. A medical examination was conducted as soon as the detainee was referred to the Public Prosecutor's Office and also before he or she was passed on to the competent judicial authority. Of course, there was no guarantee that the entire Mexican police force complied with the regulations designed to prevent torture and ill-treatment. But abuse of authority and other similar offences by public officials were punishable by law.

28. She pointed out that the conduct of legal proceedings in Mexico was somewhat different from that prevailing in other countries. There was no system of public hearings before a judge, a jury, and counsel for the defence and the prosecution. The proceedings were based largely on written material, which was submitted to the judge for analysis. The public part of the legal proceedings was considered to extend from the signing of the committal order to the delivery of judgement, and the defendant was present at all hearings.

29. A confession was not sufficient in itself to convict an accused person, even in civil cases. It could only be taken into account if it was consistent with all the other evidence in a person's file, which was accorded greater probative value. To be valid, a confession must be made before a public prosecutor or a judge. Moreover, a confession made before a public prosecutor was inadmissible unless confirmed by a judge. The person making the confession must be accompanied by a lawyer or other trusted person, who must also sign the confession. Following the reforms to reduce the weight given to confessions, there had been a decline in the number of complaints of torture. She agreed that the period in which acts of torture and other forms of ill-treatment were most likely to occur was that spent in police custody: hence the legislative provision requiring the immediate handover of detainees to the competent judicial authority. The Public Prosecutor's Office had 48 hours to conduct its investigations. Moreover, the detainee's initial statement was not accorded as much importance as in the past.

30. In reply to the question whether police investigations continued after legal proceedings before a judge had begun, she said that investigations were the responsibility of the Public Prosecutor's Office and that judges were not involved. The Public Prosecutor's Office and the Judiciary were two entirely separate bodies.

31. Judgements were handed down in public hearings, and all records of legal proceedings and submissions relating thereto were available for consultation. Proceedings in family courts constituted the only exception because of the need in certain cases to protect privacy. A bulletin containing details of judgements was published daily by each court.

32. Under the Mexican legal system, judges controlled and coordinated the proceedings through a team of professional assistants but were not always present at every stage, for example if two hearings were held simultaneously. The shortage of judges was admittedly a problem that needed to be addressed.

33. The Covenant had never been cited in a judgement because virtually all its provisions were reflected in the Constitution and the Criminal Code. However, reference had been made to other international treaty obligations entered into by Mexico which were not covered by existing legislation. For example, Mexican civil or criminal legislation did not recognize a child's right to be heard in court. The Convention on the Rights of the Child had therefore been invoked to enforce that right.

34. She admitted that there was a major discrepancy between law and practice in the area of women's rights. Education was the key to changing attitudes, and affirmative action was being taken to redress the imbalance created by customs and mores. For example, no more than 70 per cent of candidates for political office should be of the same sex. Mexico was a secular multicultural country and religious education was not provided by the State. Article 34 of the Constitution laid down the principles that governed public schooling and steps had been taken to ensure that the education provided in private schools was compatible with the principle of equality of the sexes. The Government and society as a whole were aware that girls and women were particularly vulnerable to all kinds of human rights violations and every effort was being made to prevent that legacy from being handed on to future generations.

35. Specialized agencies had been set up to hear individual complaints, for example by women who had allegedly been raped by police officers or members of the armed forces in the States of Chiapas, Guerrero and Oaxaca. Rape victims were often unwilling to bring legal proceedings for a number of reasons, including fear of reprisals, and the authorities were considering ways of tackling that problem. Not all women detainees were particularly vulnerable. In the vast majority of cases, they were in the company of others throughout their period of detention. Where rape was committed by a public official, the offence was deemed to be aggravated by abuse of authority. The National Programme for Women: Alliance for Equality (PRONAM) had been actively addressing the issue for some time.

36. The Special Rapporteur of the Commission on Human Rights on extrajudicial, summary or arbitrary executions had requested an investigation into the events at Ciudad Juárez. It had emerged, however, that the culprits had not been public officials but private individuals, most of whom were in prison. A special investigation had clarified the nature of the crimes and the motives of the perpetrators. The Mexican authorities did not take the position that provocative clothing was the cause of rape and sexual abuse. Such crimes were often the result of domestic violence. Moreover, the Ciudad Juárez cases had been influenced by regional customs and the authorities' task had been further complicated by the ease with which wrongdoers could escape across the border to the United States. The Special Rapporteur would shortly be visiting the area to conduct investigations and would report her findings to the Commission on Human Rights.

37. Discrimination in employment was not State policy. The laws guaranteed equality of recruitment for men and women and equal pay for equal work. But some private companies required female job applicants to furnish proof of non-pregnancy. A campaign to stamp out such practices had been launched several years previously. Pregnancy tests had previously been required also

by some public agencies but, thanks to the efforts of the State and federal human rights commissions, that was no longer the case. The National Commission for Women and the Labour Secretariat were also addressing the problem of companies that put pressure on women not to become pregnant during their employment contracts.

38. Mr. AMPUDIA MELLO (Mexico) said that the issue of the participation of military personnel in public security tasks had attracted considerable attention in Mexico in recent years. Diverse positions had been adopted by social institutions, the Government and political parties. Some viewed military participation as a necessary and legitimate means of strengthening programmes and strategies for the protection of individual citizens. Others argued against it in terms similar to those used by the Committee. As to whether there were sufficient legal grounds for the existing coordination between the armed forces and the civilian authorities responsible for law enforcement and public security, he admitted that article 129 of the Constitution expressly stipulated that in peacetime no military authority was empowered to exercise any functions other than those directly connected with military discipline. On the other hand, article 21 of the Constitution provided for the participation of the Secretariat for National Defence, the body responsible for supervising the activities of the armed forces, in public security tasks. An argument that had persuaded many parliamentarians to authorize army participation in such tasks was that, whereas article 129 referred explicitly to "military authority", the army invariably operated under civilian command when it engaged in public security activities. The Congress of the Union had adopted a constitutional reform permitting the armed forces to participate in such activities under civilian command and supervision. Irregularities were punishable by law, regardless of whether the perpetrators were military or civilian personnel. If an offence was provided for in the Military Code, the accused would be tried by a military court; if it came under the Civil Code, even a member of the armed forces would be tried in a civil court. For example, a number of soldiers had recently been tried in civil courts for involvement in drug trafficking. They had concurrently been tried in a military court for offences against military discipline.

39. The National Human Rights Commission would shortly create a new oversight body responsible for addressing human rights issues involving military personnel. He added that the Mexican armed forces had demonstrated their respect for the country's constitutional framework and its civilian authorities for 70 years.

40. Mr. GONZALEZ FELIX (Mexico) said that article 133 of the Constitution stipulated that international treaties formed part of the supreme law of the Union. The Covenant thus enjoyed a status comparable to that of the Constitution. The reservations entered by Mexico derived either from the Constitution or from other legislative enactments. The authorities were endeavouring to withdraw existing reservations, for example that concerning compensation for arbitrary detention. In the case of article 33 of the Constitution, the National Human Rights Commission had launched a constitutional reform initiative which the authorities were preparing to consider. The Inter-Secretarial Commission was well advanced in its discussion of the possibility of acceding to the Optional Protocol to the Covenant.

41. On 7 June, the Mexican Congress had approved a proposal to grant full autonomy to the National Human Rights Commission, which would no longer be subject to the authority of the Executive. Its director would in future be appointed by the Legislature. The Committee had noted that some of its recommendations had been fully implemented and some only partially. In some cases, legal proceedings instituted against perpetrators of human rights violations in response to the Commission's recommendations had not yet been completed. The average rate of compliance, however, was over 96.5 per cent.

42. Mr. ARIAS MARIN (Mexico), replying to a question by Mr. Yalden concerning the implementation of the San Andrés Agreement, said that all documents relating to the proposed constitutional reform, which included many new elements pertaining to the rights and culture of indigenous peoples, had been issued in the form of a diskette, a copy of which would be sent to the Chairperson. The proposed reform concerned not only the population of Chiapas but all the indigenous peoples of Mexico. Although the so-called Cocopa project was not formally before Congress, having failed to obtain the necessary consensus, the project put forward by the Executive was very similar to it.

43. Replying to Ms. Chanet's question relating to article 14, he said that a state of emergency had not been proclaimed in Chiapas because conditions in that state did not warrant the suspension of individual legal guarantees. Although some intercommunal violence was unfortunately still taking place, it was not widespread and the social fabric was still intact in many municipalities. Any responsible State in such a situation would strengthen its armed presence by bringing in deterrent military forces. Because of Mexico's long frontier with Guatemala, checkpoints had had to be set up to control not only movement of weapons, but also traffic in persons and drugs. Nevertheless, freedom of movement within Chiapas was fully guaranteed even in areas of intercommunal conflict. Zapatista sympathizers were able to move freely throughout the country, to organize political and cultural events - including football matches, and to hold press conferences. Paradoxically, the Zapatistas were perhaps the most highly publicized guerrilla group in history.

44. Mr. KLEIN said that he wished to ask a follow-up question on the issue of access to a lawyer. Was it true that persons detained by the Public Prosecutor's Office or handed over by that Office to the Judiciary were denied access to an attorney during their period of detention and questioning until they had made a formal statement?

45. Ms. PEREZ DUARTE (Mexico) said that under article 20 of the Constitution an accused person was entitled to the assistance of counsel throughout the legal proceedings. While the practice described by Mr. Klein might perhaps be found in some remote villages, it was definitely contrary to the Constitution.

46. The CHAIRPERSON invited the Mexican delegation to respond to questions in the second part of the list of issues.

47. Mr. SANCHEZ GUTIERREZ (Mexico), replying to question 15 on freedom of movement and the rights of foreigners, said that the National Human Rights Commission was working towards the withdrawal of the largest possible number of Mexico's reservations to various international human rights instruments.

So far as restrictions on foreigners were concerned, any member of a foreign NGO who complied with the country's immigration rules was free to enter Mexico and to reside there; as in every other country in the world, foreigners, including ordinary tourists, who failed to comply with those rules were ordered to leave.

48. Mr. AMPUDIA MELLO (Mexico), replying to question 16 relating to freedom of religion, said that anyone claiming to be a victim of religious intolerance could have recourse to the administrative authorities responsible for dealing with such matters. The prevailing climate in Mexico was one of religious tolerance. With regard to exemption from military service, he explained that, while there was no provision for exemption on religious or any other grounds, military service in Mexico involved a wide range of social service activities, such as participation in literacy campaigns, and did not necessarily involve bearing arms or receiving military training. For that reason, there were no recorded cases of young people requesting exemption from military service for reasons of a religious nature.

49. Mr. SANCHEZ GUTIERREZ (Mexico), replying to question 17 relating to freedom of expression, said that one of the functions of the National Human Rights Commission was to protect journalists from any threat, however insignificant, and to investigate any complaints received in that connection. There were no circumstances in which journalists could be prevented from freely engaging in their profession unless, of course, they had committed a criminal offence.

50. Ms. PEREZ DUARTE (Mexico), replying to question 18 relating to protection of the family and children, said that more than 100 programmes of assistance to street children had been adopted in Mexico since 1987. The programmes included preventive work with families, providing food and health and educational services, issuing birth certificates, and other forms of care. Early next year Mexico would be reporting on all such matters to the Committee on the Rights of the Child.

51. Ms. SANCHEZ VALDERRAMA (Mexico), replying to question 19 on the economic and social marginalization of members of indigenous communities, described the activities of the National Institute for Indigenous Affairs, which were designed to promote the recognition of indigenous rights and cultural diversity and to improve the economic and cultural situation of Mexico's numerous indigenous peoples. The Institute's activities included broadcasting in 31 indigenous languages to about 6 million indigenous listeners. The Institute also assisted indigenous peoples in legal matters. During the current year alone, requests for funding for research purposes had been received from 265 indigenous organizations.

52. Mr. GONZALEZ FELIX (Mexico), replying to question 20 on safeguards to ensure the indigenous communities' full rights of ownership over communal land, said that those rights were fully protected by the Constitution. As to question 21 on the dissemination of information relating to the Covenant, he said that information bulletins on all reports by Mexico to United Nations human rights bodies were issued and made widely available, in particular to NGOs.

53. The CHAIRPERSON invited Committee members to ask additional questions relating to the second part of the list of issues.

54. Mr. BHAGWATI expressed appreciation of Mexico's achievements in the area of human rights over the past few years and asked for clarification in connection with article 19 of the Covenant. According to information received, article 351 of the Criminal Code of 1931 provided that truth was a defence against the charge of defamation only when the victim was a public officer and the defendant had acted in pursuit of a public or legitimate private interest. That provision and other laws concerning defamation of the Government could surely be used to stifle political dissent and curtail freedom of expression, and he hoped that the Mexican Government would take action to repeal them.

55. In connection with article 22, he understood that although Mexico had ratified ILO Convention No. 87, a trade union monopoly was imposed on State employees by a Federal Act and the National Federation of Banking Unions was the only trade union body which bank employees were permitted to join. In what way were such regulations compatible with article 22 of the Covenant?

56. Associating himself with Mr. Amor's remarks concerning the severe limits imposed on contacts between Mexican and foreign NGOs, he remarked that the law authorizing the Government to expel any member of a foreign NGO whose conduct was "inconvenient" seemed to be inconsistent with the General Assembly Declaration on Human Rights Defenders.

57. Mr. SCHEININ, noting the linkage between articles 1 and 27 of the Covenant and referring specifically to question 20, asked what was the situation with regard to subsurface (oil and mineral) rights. While appreciating that all Mexico's natural resources were regarded as national property, he requested further information on possible joint ownership arrangements with regard to subsurface rights. Instead of financial compensation alone, an adequate mechanism for the protection of those rights would, in his view, place emphasis on securing the sustainability of indigenous economies and ways of life. As to agrarian reform, he welcomed the progress being made but wondered whether it might not take decades, or even centuries, to ensure the full implementation of agrarian rights for more than a small portion of Mexico's indigenous peoples.

58. Mr. ANDO expressed particular thanks to the Mexican Government for its punctual submission of the report. In connection with question 17, he asked whether there had been any convictions in cases involving assassinations of journalists. Also in connection with article 19 of the Covenant, he noted that, according to paragraph 406 of the report (CCPR/C/123/Add.1), the Ministry of Communications and Transport was free to decide "at its own discretion" to grant or refuse authorizations to the electronic media. Were there any cases where authorization had not been granted? Were any judicial remedies provided? And had recourse to such remedies ever been successful?

59. Turning to article 23, he noted that paragraphs 518 (d) and 522 of the report referred to chronic, incurable, contagious or hereditary disease as an impediment to marriage. Did the impediment apply to couples who had no intention of having children and were taking preventive measures? With regard

to indigenous rights, he associated himself with the question asked by Mr. Scheinin and inquired further whether indigenous groups in Mexico had any political parties of their own. Lastly, in connection with access to public service, he noted that only persons who were Mexican by birth could be crew members on any ship flying the Mexican flag, and wondered why the provision could not be extended to Mexican citizens by naturalization.

60. Mr. KRETZMER said that the Committee had received reports of harassment of members of foreign NGOs, particularly by the State immigration authorities. He was not entirely satisfied with the delegation's reply to the questions in paragraph 15 of the list of issues. As he understood it, article 9 of the Mexican Constitution provided for a limitation on the freedom of association in the sense that only Mexican citizens could associate for political purposes. Furthermore, under article 3 of the Constitution foreigners could be removed from the country on the grounds of interference in internal political affairs. Did the Mexican Government interpret human rights activities as interference in internal political affairs? And was that the basis for excluding human rights organizations from the country? Also, were members of NGOs, especially those dealing with human rights, subject to specific visa requirements for entry into the country?

61. If he had understood correctly the delegation's response to paragraph 16 of the list of issues, it appeared that Mexican conscripts might be drafted to perform social work. That was not in conformity with article 8, paragraph 3, of the Covenant, whereby only conscientious objectors could engage in social work. Lastly, he inquired what restrictions were placed on State employees with regard to trade union membership.

62. Ms. EVATT said that according to the report (para. 516), in conformity with article 148 of the Civil Code for the Federal District, males could marry at the age of 16 and females at the age of 14. She wondered whether there was any likelihood of such legislation being amended since, aside from being discriminatory against women, it also allowed for marriage without parental consent at a very young age.

63. The CHAIRPERSON invited the Mexican delegation to reply to questions put by members.

64. Mr. GONZALEZ FELIX (Mexico) said, in reply to Mr. Bhagwati, that as part of the new national programme on human rights, recommendations by international bodies concerning human rights violations were being followed up by the National Human Rights Commission. Furthermore, the programme provided for the dissemination of information on Mexico's obligations under various international human rights instruments, the withdrawal of certain reservations thereto and the possibility of further commitments to other treaties.

65. On the question whether the current definition of calumny could limit freedom of expression, he explained that there was no specific regulation for the latter, it being subject to the provisions of the Civil Code relating to moral damage. The delegation would provide the Committee with a more detailed reply in writing on the subject in due course.

66. In reply to questions about trade union rights, he drew attention to the fact that just recently the Supreme Court of Justice had reflected on the interpretation of freedom of association and had decided that people should be allowed to join the trade union of their choice. So it was now possible for a given institution to have more than one union.

67. Strict immigration requirements applied not only to NGOs, but also to other foreign visitors, businessmen or persons marrying Mexican citizens. No NGO had been denied entry into Mexico; indeed, current requirements were designed to facilitate entry and ensure the safety of NGO observers during their stay in Mexico.

68. Indigenous people's rights to ownership of communal land were guaranteed by the Constitution. Furthermore, in accordance with the Constitution, natural resources, including petroleum, belonged to the Mexican nation and no individual or private company could claim ownership thereof. So from that point of view the rights of indigenous peoples to communal land were also protected.

69. The willingness of his Government to ensure the safety of journalists and to punish those who threatened or used violence against them was borne out by the recent case in the State of Baja California concerning the attempted murder of a famous journalist called Blanco Ornellas. One of his assailants - a drug trafficker - had been arrested and remanded in custody. In a further case involving the murder of another well-known journalist, those responsible for plotting and perpetrating the crime were now serving prison sentences.

70. In response to Mr. Ando's questions regarding restrictions on the right to marry, he stressed that such restrictions were not designed to prevent people from marrying, but rather to protect their children against disease.

71. Mr. SANCHEZ GUTIERREZ (Mexico), providing clarification on electoral rights, said that, strictly speaking, non-party members could not stand for election, since the right to put forward candidates belonged exclusively to the political parties. Nonetheless, the electoral reform of 1996 allowed for a type of participation called "agrupacion política nacional", whose purpose was to encourage greater popular participation. In order to obtain that status the political groups in question must submit their statutes and information on doctrinal principles to the competent authorities, as well as proof of national membership of at least 7,000 people. To date 32 political groups had met those requirements and thus qualified for public funds for education, training and research. They could put forward candidates for national elections by agreement with a political party. In addition, non-party members could stand for election if they were selected by one of the political parties as "external candidates".

72. As to the political representation of the indigenous peoples, there were no indigenous political parties as such. However, he was aware of five agrupaciones políticas nacionales mainly composed of indigenous people, including El Frente nacional de pueblos indigenas y communidades marginadas.

73. Ms. SANCHEZ VALDERRAMA (Mexico), endeavouring to shed further light on the indigenous people's rights to land and property, including related claims,

drew attention to article 27 (7) of the Constitution, as well as article 98 (2) and article 99 (3) of the current Agrarian Act. Further guarantees were also provided by article 4 of the Constitution.

74. Mr. ARIAS MARIN (Mexico), responding to queries regarding the self-determination of indigenous populations, pointed out that Mexico had been one of the first countries to ratify ILO Convention No. 169. It was worth noting that Mexico adhered to the definition of the term "people" adopted in that Convention, which did not correspond to the one generally accepted under international law. Moreover, the provisions of the ILO Convention were not binding on signatory States where they conflicted with the provisions of their Constitution. In Mexico, it had been found that the most realistic way of protecting the rights of indigenous groups, preserving their language and culture, and promoting their sustainable development was for them to live in communities. More importantly, a community lifestyle made it possible to ensure that such people had adequate legal and political representation. Before such communities could be granted self-determination it was necessary to establish what land or property belonged to them. Thereafter they would be referred to as indigenous people. In a number of Mexican states, some progress had been along those lines. However, problems, particularly of a legal and political nature, arose where communities straddled different states and those measures could not be applied.

75. Yet further difficulties were encountered with the definition of territory: since under Mexican legislation the areas populated by indigenous people traditionally belonged to the State, in legal terms it was not correct to refer to land belonging to indigenous people. ILO Convention No. 169 contained a very broad definition of territory in relation to indigenous people, which encompassed environmental aspects and religious and cultural heritage. For instance, in the case of religious monuments or archaeological ruins which were owned by the State but situated on a territory traditionally inhabited by indigenous communities, there was a need for special cooperation between the federal authorities and the communities concerned.

76. Turning to the subject of agrarian reform, he stressed that the major difficulty facing the agrarian authorities at present was that they were unable to meet the demand for land from new applicants. For a number of reasons the problem was particularly acute in the State of Chiapas. He would emphasize that the distribution of land in that region had taken place considerably later than in the rest of the country. It was an undeniable fact that there were no longer any large estates available. Furthermore, the growth rate of the population was higher than the Mexican average. In an effort to avert a crisis, the Government had bought a sizeable amount of territory and had endeavoured to distribute it among new applicants. That process had virtually been completed, thus far without any major conflict with the farming associations. However, the problem had not yet been finally resolved since the further demands of new generations would need to be met. Already most farms in the area were very small in size and, since that trend was likely to continue, a review of the whole process of agricultural production was required.

77. Mr. GONZALEZ FELIX (Mexico) stressed that activities relating to observance of human rights were not viewed as interference in the internal

political affairs of Mexico, pointing out that 4,127 NGO observers had visited the country since 1998. Notwithstanding the fact that Mexico had provided a very informative report and an addendum in an effort to reflect the many new developments since the consideration of the previous periodic report, many Committee members had focused on the need for more detailed information and statistics. Those comments would be taken into account when preparing Mexico's next periodic report.

78. The CHAIRPERSON conveyed the Committee's thanks to the Mexican Government for the timely submission of a very informative report and supplementary information, and also for the competent delegation it had sent to participate in the dialogue with the Committee. The Committee welcomed the many improvements in the area of human rights since the submission of the previous periodic report, including the granting of autonomy to the National Human Rights Commission and the prospect of the withdrawal of reservations relating to relevant international human rights instruments. Although the Committee's concluding observations on Mexico's fourth periodic report would be submitted to the Mexican Government in writing in due course, she wished to summarize the main concerns that had emerged during the dialogue.

79. Firstly, legislation prohibiting the use of torture should be applicable throughout the Federation; an independent body to investigate allegations of torture was required. Concern had been expressed about exactly who was empowered to order arrest and pre-trial detention and in what circumstances. Some legislation, in particular that relating to flagrante delicto, provided considerable scope for the use of torture.

80. The second main area of concern was that of militarization. She was not satisfied with the delegation's assurances that civilian and humanitarian operations carried out by the military came under civilian command; the military were not trained to deal with such situations, they were trained for war. A further problem concerned the courts competent to try offences committed by members of the military; Mexico's regime did not seem to be in keeping with the provisions of the Covenant.

81. The delegation had claimed that the situation in the State of Chiapas did not warrant the declaration of a state of emergency. Yet several elements, including a strong military presence, the use of checkpoints and other military installations, suggested that there was in fact an undeclared state of emergency there.

82. The Committee still had misgivings about the situation of indigenous people in Mexico. It was regrettable that article 27 of the Constitution effectively prohibited the sale of land they rightfully owned; the sale of such land could make an enormous difference to their lifestyle, as had been the case in other Latin American countries. Other serious concerns related to breaches in the administration of justice owing to problems relating to written procedure, the discretionary application of immigration requirements affecting the activities of foreign NGO observers, the definition of defamation, and restrictions on freedom of expression in the media and other spheres.

83. Mr. GONZALEZ FELIX (Mexico) expressed the hope that the constructive dialogue established with the Committee would be pursued. The recommendat contained in the Committee's concluding observations would be duly followe up. At the present juncture, however, he felt it necessary to clarify one important point. Since civil operations carried out by the military came under civil command, cases of torture would come under the competence of t civil and not military courts.

The meeting rose at 6.05 p.m.

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Sixty-sixth session

SUMMARY RECORD OF THE 1764th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 19 July 1999, at 10 a.m.

Chairperson: Ms. MEDINA QUIROGA

later: Mr. AMOR
(Vice-Chairperson)

later: Ms. MEDINA QUIROGA
(Chairperson)

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Fourth periodic report of Poland

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The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Fourth periodic report of Poland (CCPR/C/95/Add.8; CCPR/C/66/Q/POL/1/Rev.1)

1. At the invitation of the Chairperson, the Polish delegation took places at the Committee table.

2. The CHAIRPERSON welcomed the Polish delegation and invited it to introduce the fourth periodic report of Poland (CCPR/C/95/Add.8) and to reply to the questions contained in paragraphs 1 to 14 of the list of issues to be taken up (CCPR/C/66/Q/POL/1/Rev.1).

3. Mr. BORUSEWICZ (Poland) said that an intensive process of social and legal reforms had taken place in Poland during the period covered by his country's fourth periodic report (1 August 1991-31 December 1994) and in the years following its submission. The National Assembly had adopted a new Constitution on 2 April 1996. Under the new Fundamental Law, which had entered into force on 17 October 1997, the rights and freedoms of all citizens were now guaranteed and the mechanisms to ensure their protection had been considerably strengthened.

4. One of the most important changes in those years was the acceptance of international instruments as sources of law. In the terms of the Polish Constitution, "after promulgation thereof in the Journal of Laws of the Republic of Poland, a ratified international agreement shall constitute part of the domestic legal order and shall be applied directly, unless its application depends on the enactment of a statute". By virtue of that provision, the Covenant could be directly invoked in Poland. Indeed, the Polish courts and, in particular the Supreme Court and the Constitutional Court, were referring more and more in their judgements to that instrument, as well as to the European Convention on Human Rights.

5. Chapter II of the Constitution set forth the general principles governing the rights and freedoms of the citizen. Those principles were in complete harmony with the provisions of the Covenant. Human dignity was now considered to be the basis of all rights and freedoms. Equality before the law was guaranteed and all discrimination in the political, economic and social spheres was prohibited. For the first time, the rights of minorities were fully recognized. The personal rights guaranteed by the Constitution included the right to life, the right not to be subjected to any scientific experiment against one's will and the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment, including corporal punishment. A person deprived of his liberty by any means other than the decision of a court of law had the right to challenge that measure before the courts. Also protected were the right to privacy, freedom of expression, the freedom to choose one's place of residence, freedom of conscience and religion and the right to provide one's children with an education in accordance with one's own opinions. In the political sphere, freedom of assembly and association, the right to take part in public life, the right to submit complaints and petitions to public bodies and the

right to strike were guaranteed. The economic, social and cultural rights recognized in the 1996 Constitution included the right of ownership and other property rights, the right to exercise the profession of one's own choosing, the right to occupational safety and hygiene, the right to social security in the event of incapacity to work, the right to health care, the right to education and family rights.

6. One of the most important provisions of the new Constitution was the one that afforded citizens the possibility of appealing to the Constitutional Court from any decision contrary to the Fundamental Law. Lastly, mention should be made of the proclamation in the Constitution of certain general rules of criminal law, such as the principle of nullum crimen sine lege and the principle of the presumption of innocence.

7. The new Penal Code, which had been adopted on 6 June 1997 and had entered into force on 1 September 1998, instituted criminal responsibility for infringement of the rules of humanitarian law and human dignity. It had furthermore abolished the death penalty, so that life imprisonment was now the heaviest punishment that could be imposed. The new Penal Code also punished any act of cruelty inflicted on persons deprived of their liberty and established criminal responsibility for State officials who employed violence or the threat thereof or committed acts of physical or mental cruelty to obtain confessions or information. By those new provisions, Poland had incorporated into its legislation the principle of international responsibility for punishing acts of torture.

8. In accordance with the Act of 29 June 1995 amending the Code of Criminal Procedure, pre-trial detention could now be ordered only by the courts. The same Act had introduced a new procedure, that of cassation, which allowed for judgements in some cases to be reviewed in a second-instance proceeding and thus eliminated the administrative factor in judicial decision-making. The new Code of Criminal Procedure, which was contained in the Act of 6 June 1997, had considerably strengthened the guarantees enjoyed by the accused. The same Act had made changes to the Punishment Execution Code, which defined the rights and duties of the convicted person. The procedure for the execution of punishment was now governed by a series of rules aimed at guaranteeing the rights of prisoners.

9. Important changes had also been made in the Civil Code. The guarantees relating to private poverty had been extended. Anyone sustaining financial injury could now claim compensation. Attention should be drawn, in that context, to the Personal Data Protection Act of 29 August 1997, which placed restrictions on the disclosure of information concerning an individual's ethnic origin, political views, religious beliefs and membership of religious organizations, parties or trade unions, as well as information about his or her health, genetic code, addiction to toxic substances or sexual life of individuals. Furthermore, the Act of 1 July 1996 had instituted a cassation procedure in civil cases.

10. The competence of the courts had been extended and it was now possible to appeal to the supreme administrative court from any decision taken by the administration. The Mental Health Protection Act of 19 August 1994 empowered the courts to verify the lawfulness of the placement or treatment of persons suffering from mental disorders in psychiatric hospitals or in centres for social rehabilitation.

11. Poland had taken new measures to harmonize its legislation with international human rights standards. The European Convention on Human Rights and its Additional Protocols Nos. 2, 3, 5 and 8 had entered into force for Poland on 19 January 1993. Poland had signed Additional Protocols Nos. 1 and 4 in 1994 and had made a declaration recognizing the competence of the European Commission of Human Rights and the jurisdiction of the European Court of Human Rights. It had also recognized the competence of the Committee against Torture to consider communications submitted by private individuals. The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment had come into effect for Poland on 1 February 1995. By a Presidential decree, Poland had withdrawn its reservations concerning the compulsory jurisdiction of the International Court of Justice with respect to the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Political Rights of Women, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Prevention and Punishment of the Crime of Genocide. It should be pointed out, in addition, that the Council of Ministers had in 1998 adopted a resolution recognizing the competence of the Committee on the Elimination of Racial Discrimination to receive and consider complaints from individuals or groups of persons under Poland's jurisdiction.

12. Following the amendments to the Penal Code abolishing the death penalty, Poland intended shortly to accede to the Second Optional Protocol to the Covenant and Additional Protocol No. 6 to the European Convention on Human Rights. Lastly, it should be pointed out that human rights standards were being made more widely known and included in the curricula of an increasing number of Polish educational institutions. There were currently human rights chairs in several Polish universities. Furthermore, decisions by the European Commission of Human Rights and by the European Court of Human Rights were now reported in various professional publications and in the media. Seminars and training courses were also organized for judges, prosecutors and State officials.

13. The CHAIRPERSON thanked Mr. Borusewicz for his introduction and invited the Polish delegation to reply to the questions put by the Committee in the list issues to be taken up (CCPR/C/66/Q/POL/1/Rev.1).

14. Ms. JANISZEWSKA (Poland) said that the answer to the first question was already contained in the statement by Mr. Borusewicz. She would add only that, since the entry into force of the new Constitution, the courts no longer saw any reason not to refer to the International Covenant on Civil and Political Rights. In the event of a conflict between domestic law and the provisions of the Covenant, Polish courts referred to the sources of law mentioned in the Constitution and thus gave precedence to international instruments, including the Covenant. It was now common for the courts, and in particular the High Court, the Court of Appeal and the Constitutional Court, to base their decisions on the provisions of the Covenant and other international instruments. In one of its judgements, for example, the High Court, referring to article 19 of the Covenant, had found in favour of a citizen in a legal dispute between that person and the State. The same court had taken an extremely important decision in 1997, when it had ruled that the Polish regulations concerning the extension of detention pending trial should be aligned with the provisions of the European Convention on Human Rights. The Constitutional Court for its part, had adopted a similar position on numerous occasions.

15. Ms. DABROWIECKA (Poland), replying to question 2, said that the text of the Optional Protocol, like that of any other ratified instrument, had been published in the Official Gazette, which was available to everyone. It had also been reproduced in various compendiums of human rights instruments, as well as in some newspapers and specialized magazines. At least six universities offered courses on human rights, within which the Optional Protocol was, of course, studied. In addition, members of the public were becoming increasingly familiar with their rights and a growing number of individuals inquired with the Ministry of Justice or the Ministry of the Interior to find out how to institute proceedings in the event of a violation of their rights. It should, however, be recognized that people still tended to bring their complaints before the European Court of Human Rights rather than before United Nations bodies.

16. Ms. JANISZEWSKA (Poland) said that the declaration of a state of emergency was governed by article 11 of the new Constitution, under which civil rights, the applicability of humanitarian law and access to the courts could in no way be limited when a state of emergency was declared. Turning to question 4, she said that the Committee's views had been considered by an ad hoc parliamentary commission, which had found there to be no need for the existing legislation to be amended.

The meeting was suspended at 11 a.m. and resumed at 11.10 a.m.

17. The CHAIRPERSON said that, in view of problems of interpretation, she invited the delegation to reply only to those questions it could answer in English, namely questions 5, 6, 7, 8, 11, 12, 14 and 17 of the list of issues.

18. Ms. KOWALSKA (Poland) said that the new Government, which had taken office in November 1997, was making policy concerning the family one of its priorities and had launched a programme aimed at guaranteeing the same rights, including the right to maternity leave, for men and women. Within the Government, the plenipotentiary for family affairs was charged with proposing legislative measures and coordinating the efforts of the various ministries and bodies for the advancement of women. Attention should also be drawn to the very active role played in that regard by the Commission on Family Affairs, the Commission on Social Welfare and the Parliamentary Women's Group at the national level, and by the specialized bodies and family support centres within local communities. Poland had ratified the Convention on the Elimination of All Forms of Discrimination against Women in 1980, the Convention on the Rights of the Child in 1991 and the European Convention on Human Rights in 1993. Many domestic provisions could also be applied for the protection of women's rights. The Constitution, in articles 32 and 33, guaranteed the equality of all persons before the law and the equal rights of men and women, while the Labour Code in its article 11 ensured equal treatment for men and women and recognized the principle of equal pay for equal work. A citizens' rights commissioner, or ombudsman, was available for anyone who felt that his or her human rights had been violated. It nevertheless had to be admitted that in practice, although some progress had been made, discrimination was still a reality and there were relatively few women in high-level posts. The Government was focusing its efforts on giving practical effect to the provisions of the Constitution, notably through a national plan of action approved in April 1997 following the Beijing Conference.

19. Concerning abortion, she referred the members of the Committee to the information given in paragraph 41 of the report. It should be pointed out that the law on the voluntary termination of pregnancy had been made more flexible in 1996 in order to allow a woman whose life was endangered or who found herself in difficult personal circumstances to have an abortion up to the twelfth week of pregnancy; however, for social reasons, abortion had been deemed unconstitutional in 1997 and as of 1998, therefore, it was again the 1993 Act described in the report that applied. According to official figures, a total of 218 abortions had been practised in 1998 to safeguard the mother's life or health, 46 of them because of serious damage to the foetus and 53 because the pregnancy had resulted from rape. With the widespread use of contraceptives, especially oral contraceptives, of which sales had doubled since 1987, the number of early pregnancies had dropped considerably in recent years. In that regard, she wished to point out that family planning services were available for boys as well as girls. Those services could provide all the existing types of contraceptives, some of which were reimbursable and could be supplied without a prescription. Although the law required doctors to advise a patient about family planning only at the patient's request, in practice they often took the initiative in providing such information. Sterilization was allowed only on medical grounds.

20. Since November 1998, the legal age for marriage had been 18 years for women as well as for men. There was only one exception to that rule: the guardianship magistrate could under some circumstances, generally in cases of pregnancy, allow a person below 18 years of age to marry provided that the future spouse was at least 18 years of age.

21. Mr. STRUMINSKI (Poland), replying to question 5 (e), said that under article 12.3 of the 1994 Employment Act, men and women enjoyed equal access to work and had to be informed of the reasons for any refusal to employ them. In fact, however, employers did sometimes refuse to employ a woman because she was pregnant, without giving any reason for their decision. When a pregnant woman was unable to find work, she was entitled to a compensatory allowance that was normally paid for up to a month after the child's birth, but could be extended for a year or even more in certain special cases.

22. Ms. KOWALSKA (Poland), replying to question 6, said that an inquiry could be conducted when there was a suspicion of domestic violence, whatever the source of the information giving rise to that suspicion. Individuals were protected against domestic violence both by the ratified international instruments already mentioned and by national law. The Penal Code provided, in particular, for a prison term of six months to five years for perpetrators of domestic violence, and the sentence could range from 1 to 10 years' imprisonment when there were aggravating circumstances. Alcohol and poverty seemed to be the commonest causes of domestic violence. It was, of course, very difficult to obtain data on that problem. However, it could be said that in 1998 the police had intervened in 124,000 cases of domestic violence, the victims being women in 60 per cent of the cases, children in 22 per cent of the cases and adolescents in 18 per cent of the cases. The perpetrators of the violence had been men in 93 per cent of the cases, women in 6 per cent of the cases and adolescents in 1 per cent of the cases.

23. Institutional measures to combat violence within the family were of several kinds. Telephone hotlines, set up by State bodies dealing with problems related to alcoholism, offered information and advice free of charge. That service had been provided mainly in the large cities,

but it was gradually being extended to various other parts of the country. In addition, a number of crisis intervention centres worked together with the social welfare services, but there were unfortunately still too few of them. There were also more than 100 homes catering for single women, mothers with children and people with no fixed abode. As part of the programme to ensure equal opportunities for women, nine other homes of that kind would be working by the beginning of the year 2000. Mention should also be made of the programme launched in 1997 by the services dealing with problems of alcoholism, which was designed to inform the public about various aspects of violence within the family. Lastly, several NGOs were working in that field, along with numerous local associations.

24. The authorities considered that the most urgent tasks were to coordinate the existing bodies and institutions, to support them with funding and human resources, including training for their staff, to create and develop institutional networks and to pursue information campaigns to raise public awareness of the problems posed by domestic violence, in particular by encouraging the establishment of self-help groups. While it was essential to assist the victims, however, there was also a need to address the root causes of acts of violence and deal with the problems of those committing them.

25. Mr. STRUMINSKI (Poland), replying to the question in paragraph 7, said that the relevant law was very recent, having been adopted in December 1998. Social Security Fund pensions, under the new law, were related to age. To be entitled to a pension, persons born before 1 January 1949 had to be 60 years of age in the case of women and 65 for men. A woman needed to have been in full-time employment for 20 years, as against 25 years for men. By virtue of the new law, persons born after 31 December 1948 were now subject to the same conditions. It should be pointed out that women were generally satisfied with the situation, which involved some inequality of treatment, of course, but that was in their favour.

26. Ms. DABROWIECKA (Poland), answering the question in paragraph 8, indicated that the new Penal Code did not provide for capital punishment and consequently there should no longer be any obstacle to ratification of the Second Optional Protocol. The new Penal Code also provided that persons who had been sentenced to death prior to its entry into force would have their sentences commuted to life imprisonment. Poland had now begun the process of ratification of Protocol No. 6 to the European Convention on Human Rights, which likewise concerned the abolition of capital punishment, and the next step should be to ratify the Second Optional Protocol to the Covenant.

27. Mr. LAPTAS (Poland), replying on issues 11 and 12, indicated that the procedure for prison inspections was governed by Ministry of Justice order No. 2 of 22 January 1992, as amended in 1996. It should be pointed out, first of all, that prisons and remand centres were placed under the supervision of the district prison administration, which was accountable to the central prison administration. Inspections of detention centres were conducted by teams from one or the other administration at least once every three years. The inspection teams were made up of experienced prison administration staff, doctors and psychologists. They visited all cells, including solitary confinement cells and high-security or disciplinary blocks, and all other buildings of the penal institution. Inmates could submit complaints, petitions or requests to them, either orally or in writing, and that helped the inspectors to form a more accurate picture of conditions of life in the prison. After their visit, the inspectors drew up a report, which was

forwarded to the prison director, and a copy was sent to the central prison administration. The prison director was required to take action on the report, in principle within a month, and to implement all its recommendations. Where an offence had been committed in the institution inspected, the central prison administration was informed and had in turn to inform the Public Prosecutor's Office.

28. He then presented statistics on the number of complaints concerning the attitude of prison staff towards inmates in 1995 and 1996. The competent authorities had recorded 1,496 complaints in 1995, of which 26 had been well-founded, and 1,462 complaints in 1996, of which 11 had been well-founded. In 1995, the authorities had also recorded 127 complaints relating to the use of force, of which 3 had been well-founded, and in 1996 they had registered 78, of which 4 had been well-founded. The most recent statistics, which had been compiled in June 1999, indicated that the number of complaints directed towards the prison administration (in 1996, 1997 and 1998) had totalled 8,133, 8,495 and 8,786, respectively. Complaints relating to medical treatment accounted for nearly 30 per cent of all complaints, the remainder dealing with living conditions, the supply situation within prisons and the delivery of parcels, freedom of correspondence, visiting rights, etc. However, there had been no complaint of torture or ill-treatment. As to the use of force, the latest statistics were not yet available, but his delegation would not fail to communicate them to the Committee as soon as possible.

29. With regard to disciplinary action taken against prison staff who had committed violations, eight proceedings had been instituted in 1995 and 1996, and they had led to sanctions against the eight officers concerned. The applicable sanctions included a warning, a reprimand, a severe reprimand and complete or partial disqualification from armed service for a period of two years or more, during which time the officer in question would have no possibility of promotion and could have his bonuses reduced or eliminated. With regard to the prison population, there had been 54,367 prisoners in Poland at the end of June 1999, and that represented 84.5 per cent of the capacity of penal institutions. There was therefore no problem of prison overcrowding. A total of 1,295 juveniles had been in correctional centres as at 31 March 1999.

30. In conclusion, he drew the attention of Committee members to the procedures affording safeguards against ill-treatment of prisoners. There was a law which laid down all the rules to be observed by prison staff before and after any measure of coercion was used against a violent inmate. In particular, they were required to ask the inmate, using means other than force, to stop being violent and, after using force, they had to meet a number of requirements. The prison director had, for example, to interview the inmate subjected to a coercive measure and inform him of his rights. The inmate could complain to the penitentiary court, which was a kind of appeal body. If an inmate was placed in a high-security block, the prison service had to give him a medical examination and draw up a report when he was returned to his normal cell. Any new inmate had to be given a medical examination within two days of entering the institution; if, for example, the examination showed traces of blows on the body that might be attributable to the police, the director had to inform both the Public Prosecutor's Office and the police service of such findings.

31. The procedures designed to guarantee no ill-treatment by the police were very similar and likewise afforded satisfactory safeguards.

32. Mr. LEWANDOWSKI (Poland), replying to question 14, said that many changes had taken place, since the drafting of the fourth periodic report. In particular, a new law on aliens had entered into force on 27 December 1998, which specified the conditions applicable to their deportation. That law established no obligation to deport an alien and it stipulated that the police or border guards could detain an alien for only 48 hours; the fact that it might prove impossible to return the person to the border in time did not provide grounds for extending the deadline. Only the provincial courts could order a person's arrest or remand in custody for a longer period, which could in no case exceed 90 days. Should it not be possible to return the alien to the border within that time or to establish his identity, he would have to be released.

33. With regard to the implementation of article 13 of the Covenant, there had been practically no cases that raised issues under those provisions, since the aliens expelled from Polish territory had generally been persons living illegally in the country.

34. Ms. DABROWIECKA (Poland), replying to the question in paragraph 17, said that homosexuality was not a punishable offence in Poland. Nor was there any law or regulation establishing a particular status for homosexuals. Furthermore, the Constitution clearly guaranteed the general principle of non-discrimination and the new Personal Data Protection Act also contained provisions relating to the protection of information concerning a person's sexual life. Sexual minorities had, moreover, created their own associations and newspapers, and there was no law or regulation allowing their rights to be restricted.

35. The CHAIRPERSON invited the members of the Committee to put questions orally on the replies given by the Polish delegation concerning paragraphs 1, 2, 5, 6, 7, 8, 11, 12, 14 and 17 of the list of issues.

36. Mr. KLEIN observed that Poland had made considerable progress with regard to human rights since the end of the authoritarian regime and had laid the foundations of a free and democratic society.

37. With regard to the prison population, he was pleased to learn that prisons were not overcrowded. That was a rare and therefore noteworthy achievement. Paragraph 79 of the report did, however, indicate that there had been serious rioting in some houses of correction between 1991 and 1994. Had there been any further riots since then? He also wondered whether those events could be attributed solely to the personality of the juveniles or whether the living conditions in the institutions had also been a factor. He would welcome information about the current situation in such institutions.

38. With regard to question 14 concerning persons subject to deportation, he recalled that, under an agreement with Germany, Poland had committed itself to sending back persons who attempted to cross Polish territory in order to enter Germany and seek asylum there. He would like to know how the Polish authorities dealt with such persons, in what premises, and for what length of time they were detained, after what period they were returned and, in general, whether the new legislation concerning aliens applied to them. More specifically, if they were not expelled after being held in custody for 90 days, were they then released?

39. Concerning the application of article 15 of the Covenant, he noted from paragraph 100 of the State party's report that all penal provisions were governed by the nullum crimen sine lege principle, which was a generally recognized rule of international law. Nevertheless, he would like to know whether the Polish courts actually applied the provisions of article 15, paragraph 2, of the Covenant which stated that "nothing shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal", when dealing with crimes committed in the past in Poland. Article 52 (5) of the Polish Constitution stipulated that anyone whose "Polish origin" had been confirmed in accordance with statute could settle permanently in Poland, and he wondered what was meant by the term "Polish origin": did it mean ethnic or national origin and did that provision of the Constitution, read in the context of article 12, paragraph 4, of the Covenant, mean that only persons of Polish origin could consider Poland as their own country? Lastly, he would like to know whether the provisions of article 77 of the Constitution, which stated that "everyone shall have the right to compensation for any harm done to him by any action of an organ of public authority contrary to law", were self-executing or whether a statute had been needed to guarantee the enforcement of those provisions.

40. Mr. SCHEININ asked whether the Covenant and the European Convention on Human Rights had the same status in domestic law and whether the two instruments were applicable in the same way. He noted from paragraphs 11 and 12 of the State party's report that the procedures for ratifying the Optional Protocol and the European Convention were not identical and he would appreciate some clarification on that subject. Furthermore, he asked whether the new Penal Code also abolished capital punishment for crimes committed during war time and whether, in the event that Poland decided to ratify the Second Optional Protocol to the Covenant, it might not consequently enter a reservation concerning the applicability of the death penalty to war crimes.

41. In response to question 7, the delegation had indicated that women in Poland were generally not against there being a difference between men and women regarding the age of entitlement to a pension, but he wondered whether a problem of indirect discrimination might not arise from the fact that women were more likely to be excluded from the labour market: employers might be reluctant to hire women who, for example, had brought up children and were looking for a new job, given that they would soon become eligible for a pension. Also on the subject of discrimination between men and women, perhaps the delegation could indicate whether any distinction was made in the legislation concerning citizenship and whether foreign men who married Polish women had more difficulty in acquiring Polish citizenship than the foreign wives of Polish nationals. Lastly, he was surprised at the very low number of legal abortions in Poland in 1998, the figure being reportedly only 310. It would seem that the provisions of the law allowing abortion were so restrictive that the lives and health of many women in Poland could be at risk and that women might be victims of ill-treatment if they were unable to secure their right to a legal abortion, particularly in cases of rape. Perhaps the delegation could comment on how far the applicable law was really compatible with the provisions of articles 6 and 7 of the Covenant.

42. Mr. YALDEN said that he was particularly interested in the role of the Ombudsman, who had a very prominent place in Poland in the field of human rights. Regrettably, the figures and information provided in the State party's report were largely out of date and he hoped that the

delegation would be able to supply more recent and detailed information about the number of complaints submitted to the Ombudsman, the nature of such complaints and the outcome of their consideration. He noted that, under the Constitution and applicable statute law, the Ombudsman was empowered to deal only with cases arising in the public sector. What authority could take action in the private sector in cases relating, for example, to employment or housing?

43. With regard to the status of women, the report contained very little information concerning article 3 of the Covenant (para. 34 of the report) and article 26 (para. 146), although the question of equality between men and women was extremely important. Article 32 of the Polish Constitution certainly guaranteed the equality of all persons before the law, but nothing was said about the situation in practice. Many sources, including the Committee on the Elimination of Discrimination against Women, reported on the inequality of women, particularly in remuneration and employment. In that regard, he would like to know whether there was any law to prevent discriminatory measures from being taken by companies and employers, both in the public sector and in the private sector. He shared the concerns expressed by Mr. Scheinin regarding the law on abortion and the right to a pension, which in his view was hardly compatible with the provisions of the Covenant. Lastly, if homosexuality was not punishable by law, he would like to know for what reason all specific references to sexual orientation had been deleted from the approved final version of the new Constitution.

44. Mr. Amor took the Chair.

45. Mr. ANDO, referring to the status of the Covenant in domestic law, noted that article 9 of the Constitution called for the Republic of Poland to respect any international law which was binding upon it. He wondered whether that provision also applied to the rules of customary international law, particularly in the field of human rights, and whether there was any case law on that subject. He also noted that, under article 91 (2) of the Constitution, any ratified international agreement had precedence over statute law. What, however, was the status of the Covenant vis-à-vis the national Constitution? A comparison of article 235 (4) of the Constitution, as amended, with article 90 (2) suggested that the requirements for ratification of a treaty by Parliament were more severe than those for ratification of a law amending the Constitution. He would appreciate some clarification of that matter.

46. With regard to gender equality, he associated himself with the questions put by Mr. Scheinin and Mr. Yalden. He also wondered whether the fact that a married woman needed her husband's approval to transmit property to her children did not constitute discrimination based on sex. Lastly, with regard to question 11, he would like to have more information about reported cases of sexual harassment of younger persons by adults, in the army and in prisons.

47. Ms. Medina Quiroga resumed the Chair.

48. Ms. CHANET said that a number of questions had been left pending after the consideration of Poland's third periodic report in 1990 and, bearing in mind the time in which that report had been considered, those questions had been fully justified. The fourth periodic report dated from 1996, which meant that the information contained in it was largely out of date and the Committee would need much more information to be able to understand the significance of human rights developments in Poland.

49. Regarding the status of the Covenant in the internal legal order, she shared the concerns of Mr. Ando and Mr. Scheinin. She noted that the Covenant was actually mentioned in some court decisions where there was a gap in national legislation, but nothing was said about what happened in the event of a conflict between the Covenant and domestic law or about the possibility of invoking Covenant provisions directly before the courts. She would like to have some specific details on that subject. With regard to the application of article 2 of the Covenant, she noted that article 79 of the Polish Constitution provided that anyone whose freedoms or rights had been infringed could appeal to the Constitutional Court, but those provisions were not applicable to the rights referred to in article 56 of the Constitution, which dealt with the rights of foreign nationals. Were such persons consequently unable to avail themselves of the same remedies as Polish nationals when their rights were violated? Perhaps the delegation could comment on the question of whether those provisions were in conformity with article 2 of the Covenant.

50. Concerning the status of women, she noted that article 168 of the Penal Code, which dealt with rape, provided for heavier penalties when rape was committed with unnecessary cruelty. In her view, that raised the question as to whether any cruelty could be "necessary" in the case of rape. Furthermore, in 1990 the Committee had asked questions about the law relating to the voluntary termination of pregnancy, and the delegation at the time had been unable to answer them because a discussion on that subject had been under way in the country. That discussion had led to a law of 1993, which had been amended in 1996 and again in 1997 in a restrictive way that not only impinged on a woman's freedom of choice but also paved the way for the practice of clandestine abortions, thus endangering the woman's life and health, as well as creating discrimination between women who could obtain abortions abroad and those who were unable to afford them. That restrictive legislation forced some women to continue their pregnancy, which constituted an additional handicap for them when they were looking for work. Lastly, it would appear that the principle of equal pay for equal work as between men and women was not respected and that women were also being discriminated against in the exercise of their right to a pension. It was not surprising, therefore, that few women in Poland had access to high-level posts.

51. Mr. KRETZMER said that he shared the concerns already expressed by other members of the Committee. Regarding the specific issue of gender-based discrimination in employment in the private sector, while Polish law prohibited discrimination among employees, he wondered whether there might be some discrimination between job seekers and, in particular, whether the law prohibited any reference to gender in job advertisements and in replies to such advertisements. What remedies were available to the victims in cases of discrimination of that kind? Furthermore, did the law prohibiting discrimination in employment also prohibit discrimination based on sexual orientation?

52. With regard to the status of women, he associated himself with the questions put by Ms. Chanet. In fact, according to the new Penal Code of 1998, the punishment for rape with cruelty had been reduced from between 3 and 15 to between 2 and 12 years' imprisonment, and some sources indicated that the courts tended to impose even lighter sentences, which would suggest that rape was not considered to be a particularly serious offence. Could the Polish delegation provide some information on that subject?

53. Although, as the delegation had indicated, corporal punishment was now prohibited by law, schoolchildren were apparently still being subjected to some undesirable sanctions, often involving verbal abuse. He wondered whether there was not a violation of article 7 of the Covenant in that regard, and what measures might be taken to eliminate such practices. Lastly, concerning question 11, on the conduct of law enforcement officials, it would seem that out of 8,000 complaints filed for acts of violence or other abuse of power, only eight had been found to be justified. Could the delegation explain that disparity? He would also like to know whether the authority responsible for handling complaints made against prison staff or members of the police was actually independent of the prison administration and the police.

54. The CHAIRPERSON indicated that the Polish delegation would reply to the supplementary questions raised orally by members of the Committee at the next meeting.

The meeting rose at 1.05 p.m.

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Sixty-sixth session

SUMMARY RECORD OF THE 1765th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 19 July 1999, at 3 p.m.

Chairperson: Ms. MEDINA QUIROGA

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GE.99-43074 (E)

The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Fourth periodic report of Poland (continued) (CCPR/C/95/Add.8)

1. Ms. EVATT said she had found paragraph 34 of the report (CCPR/C/95/Add.8) dealing with women's issues somewhat disappointing. She inquired about the scope of legislation prohibiting discrimination against women in employment in the private sector. Were remedies available in cases of sexual harassment? She understood that restrictive laws still existed under which women were prevented from fully exercising their right to employment. There was also the issue of different retirement ages for men and women entailing a reduced pension for women. Was it true that fewer women currently held political office than in the past?

2. With regard to domestic violence, she asked whether there was legislation in Poland under which women could go to court to seek a protective order restricting the movement and activities of a person such as a husband or partner who had perpetrated violence against her. Was it true that a request by the victim was required in order to institute legal proceedings in cases of rape?

3. There had reportedly been an increase in trafficking in women to, from and through Poland. She asked whether, following the visit to the country by the Special Rapporteur of the Commission on Human Rights on violence against women, its causes and consequences, legislation addressing that offence had been enacted and, if so, to what extent it had been invoked to prosecute offenders and protect victims.

4. Was it true that a married couple must assume the family name of the husband, unless a declaration to the contrary was made at the time of marriage, and that children, even in the case of an unmarried couple, could only take the father's name?

5. The grounds for divorce seemed to permit courts to turn down applications where they were not convinced that a marriage had irrevocably broken down or where they felt that the interests of the children required that the partners should remain together. To what extent had applications for divorce been refused on those grounds?

6. She shared the view of other Committee members that restrictions on abortions, withdrawal of financial support for contraception and the removal of sex education from school curricula could jeopardize the health and even the lives of women.

7. She submitted that the denial of permission to hold the Gay Pride Festival in Warsaw in 1998 indicated that there was some measure of discrimination against homosexuals in Poland.

8. She asked what provision was made to ensure that persons expelled or deported as illegal immigrants were not returned to a country where they might

be at risk of a violation of article 7 or other provisions of the Covenant. What steps had been taken to ensure that the non-refoulement law complied with international standards?

9. Mr. AMOR welcomed the progress that had been made in human rights in Poland since the end of the former regime. He had not yet fully understood to what extent the Covenant took precedence over Polish domestic law. According to article 91 (1) of the Constitution, ratified international treaties constituted part of the domestic legal order and were applied directly unless their application depended on the enactment of a statute. He asked for clarification of the last clause.

10. He associated himself with other members' comments on the virtual impossibility of securing a legal abortion in Poland and the difficulty of obtaining access to contraceptive methods and devices. The official figure for abortions obviously did not reflect the real situation. He understood that religion and tradition weighed heavily on women when it came to making reproductive choices.

11. He asked whether the restriction placed on rights under article 56 of the Constitution by article 79 (2) was applicable to all foreigners. In other words, were foreigners whose papers were not in order deprived of certain procedural guarantees to which they were entitled under the Covenant?

12. Mr. POCAR said he was impressed by Poland's achievement in recent years, including the drafting of a new Constitution. He associated himself with the comments by other members on the status of the Covenant, gender equality, the status of foreigners and the issue of refoulement.

13. He would welcome more details about the regime of accountability of public officials. Article 2, paragraph 3, of the Covenant did not necessarily require personal accountability where a violation was committed by a person acting in an official capacity; in some cases, State liability sufficed. But rights and freedoms were obviously better protected where officials were held personally accountable for their acts and could not hope to enjoy impunity. He referred not only to serious offences entailing criminal responsibility but also to minor civil or administrative abuses of authority.

14. Mr. SOLARI YRIGOYEN welcomed the action taken in recent years to build a democratic system in Poland that was diametrically opposed to the previous system of government. In the light of the admission in paragraph 34 of the report that men held more high-level posts than women, he asked what proportion of seats in the two chambers of parliament were held by women and what steps were being taken to redress any imbalance.

15. According to reports from reliable NGOs, members of the police and armed forces in Poland had failed to comply fully with the provisions of article 7. He wished to know whether torture and cruel, inhuman or degrading treatment or punishment were recognized as offences punishable by law under the amended Penal Code of 1997 and, if so, what penalties were prescribed for such offences.

16. There had also been reports of physical and verbal ill-treatment of pupils by certain teachers. He inquired about the scale of the problem and asked how it was being addressed by the authorities.

17. Lastly, he wished to know how the Polish authorities reconciled the practices of interception of correspondence and surveillance of private citizens with the provisions of article 17 of the Covenant.

18. Ms. KOWALSKA (Poland) said that the number of abortions in Poland had obviously been underestimated but it was difficult to obtain realistic figures. On the other hand, the figures had not been high even when abortion had been freely available in Poland: about 50 per cent, or one abortion for every two live births. The use of modern contraceptives partly accounted for the recent decline in the ratio. The authorities were aware that abortions were obtained abroad and that illegal abortions were performed, sometimes under unsafe conditions, but there were few figures for ensuing medical complications. Although women in difficult social and economic conditions might be deprived of the right to abort, they were offered financial support and access to shelters and hostels. The Commissioner of Citizens' Rights (Ombudsman) had received no complaints concerning denial of reproductive rights or the refusal by doctors to perform abortions. On the other hand, a number of women who had been accorded the right to abort because of serious and irreversible damage to the foetus had decided to give birth to a disabled child.

19. A woman did not automatically assume her husband's family name if she made no declaration at the time of marriage. She was perfectly entitled to keep her maiden name.

20. There were structural differences in the Polish labour market. A large proportion of women were employed in such non-productive branches as health services and education, where wages were low for both sexes. Men who held managerial posts often earned higher salaries but it was difficult to establish whether the duties of women occupying similar posts were such as to warrant equal pay.

21. The Ombudsman had received a number of complaints regarding inequalities between men and women during the period from 1988 to 1999. In the case of complaints concerning access to contraceptive methods and devices, the most common barrier was financial. The Ombudsman had written to the Ministry of Health about the problem but no positive response had been received as yet. Another topic was the right of women to study in the all-male army universities. It had previously been argued that social conditions in the universities were inappropriate for women but that argument no longer held sway and a favourable outcome was expected in the near future. More than 300,000 petitions had been received by the Ombudsman in the period under review, including some 40,000 in 1998. Most of them concerned labour law, social insurance, business matters, taxes, administration, justice and prosecution agencies. In response to the petitions, over 130,000 messages had been sent to ministries, institutions and agencies urging them to address the issues raised.

22. There had been cases of violence in schools but they were not covered by laws relating to education and cases of prosecution of teachers were rare. However, the educational reforms that were to come into effect on 1 September 1999 would address the problem, for example through the establishment of a parents' council in each school.

23. Mr. STRUMINSKI (Poland) said that the new legislation on pensions introduced in December 1998 did not really discriminate against women. Although the normal retirement age was 65 for men and 60 for women, there was nothing to prevent women from continuing to work until 65 if they so wished. The statutory difference was intended to reflect differences between the sexes in terms of the procreative and nurturing functions performed by women. Men in some occupations, for example lorry drivers, also enjoyed protection for biological reasons in the form of minimum working hours. There had been no official survey of public opinion on the pension system. However, the parliament had been widely consulted and it was generally accepted that between 70 and 75 per cent of women preferred the new system.

24. It could not be denied that, in general, women earned less than men in Poland. The reasons were simple: most women preferred to work shorter hours, or not to work at all, in order to devote more time to their family. On the other hand, some Polish businesswomen undoubtedly earned higher salaries than their husbands. There was no discrimination against women who worked the same hours as men and maintained the same level of productivity.

25. He confirmed having seen in the national and regional press job advertisements for female employees who were not pregnant. However, that was the exception rather than the rule and thus not a major concern. In any case what was the solution? Any attempt to place restrictions on job advertisements would be an infringement of the right to freedom of expression. There were equal employment opportunities for men and women.

26. It was illegal to refuse women employment in connection with maternity leave. Complaints on that score could be addressed to the labour courts or the Commissioner of Citizens' Rights (Ombudsman). Likewise, it was against the law to refuse employment on the grounds of sexual orientation. In practice, homosexuals sometimes encountered problems in that regard, but the situation was improving year by year.

27. Mr. LEWANDOWSKI (Poland), wishing to clarify a number of issues raised by the Committee, drew attention to article 37 of the Polish Constitution, according to which foreigners basically enjoyed the same freedoms and guarantees as Polish nationals, subject to exceptions defined by law. Furthermore, foreigners were afforded the additional protection of political asylum and refugee status under article 56 of the Constitution. They could not file a constitutional complaint with regard to those matters; in accordance with article 79 (z), however, there was nothing to prevent them lodging complaints relating to other issues.

28. The principle of non-refoulement was enshrined in Polish legislation. Poland had ratified the Convention relating to the Status of Refugees in 1991 and had made the necessary amendments to its Aliens Act. The wording of Article 53 of the amended Act reflected that of article 33 of the Convention

and provided the same guarantees as article 7 of the Covenant and article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

29. Earlier he had mentioned the fact that article 13 of the Covenant did not cover people held in refugee centres; it applied only to people lawfully present in the territory of the contracting parties. However, under Polish legislation, both legal and illegal immigrants were guaranteed due process; even when held in detention for 48 hours, they were entitled to file a complaint and thereby ensure that the lawfulness of the detention order was investigated.

30. He could not provide accurate figures on the number of people returning to Poland under the Polish-German readmission agreement. He reckoned that approximately 50 per cent of returnees were transferred to other countries, including Lithuania and Ukraine; 5 to 10 per cent (usually from Afghanistan and Sri Lanka) remained in Poland on grounds of non-refoulement; the rest could apply for refugee status.

31. There was no differentiation between the sexes in examining applications for Polish citizenship, as was borne out by article 10 of the Polish Nationality Act, which referred to "the foreigner contracting marriage with a person holding Polish nationality".

32. One of the principles underlying the Constitution was that any Polish citizen could return to Poland. The repatriation programme referred to by some Committee members applied to people of Polish origin who, for some historical reason, had so far been denied the opportunity to return to Poland and to apply for citizenship (i.e. people from the former Soviet Union).

33. Mr. LAPTAS (Poland), replying to questions concerning the execution of penalties and the treatment of convicted and unconvicted prisoners, drew attention to article 40 of the Constitution, which prohibited ill-treatment. That principle, as well as the principle of due respect for human dignity, was enshrined in the new Punishment Execution Code, which law enforcement officers were obliged to comply with. Violations of the Code constituted offences carrying a penalty of three to five years' imprisonment.

34. Conditions in Polish prisons were not good, mainly because the buildings were old and badly in need of repair. It was essential to provide adequate living space for prisoners and to improve their general conditions by ensuring that they had access to certain facilities (television, radio, computer) and to recreational activities. In 1994, the Central Prison Service had launched an investment and modernization programme for prisons, to be completed by the year 2000.

35. In 1998, 8,786 complaints had been filed against prison authorities, and in 265 cases the complaints had been found to be justified. The statistics he was referring to had been provided by the Central Prison Service and came from a number of sources. Prisoners could address their complaints either directly to the prison authorities or to members of parliament, NGOs, public prosecutors and the Ombudsman, who would forward them to the Central Prison Service for investigation.

36. With regard to complaints about police behaviour, between January 1995 and December 1998 a total of 2,639 criminal cases had been brought before the courts. For instance, there had been 35 complaints about the unlawful use of firearms involving 32 police officers; they had resulted in three convictions. During the same reporting period it had been found necessary to take disciplinary measures in 1,685 cases, resulting in the imposition of penalties and numerous dismissals.

37. Ms. ZIORKIEWICZ (Poland), replying to queries regarding legislation on rape, confirmed that, under the new Penal Code the penalty for rape had been reduced by comparison with the 1969 Code. That was in line with the general trend towards the liberalization of punishment in Poland. Nonetheless, under the new Code, rape was still considered as one of the most serious crimes and carried a penalty of up to 12 years' imprisonment. If the Committee was not satisfied with that answer, she could provide further written information on the subject in due course.

38. There were no obstacles to Poland's ratification of the Second Optional Protocol to the Covenant since capital punishment was not permitted under Polish criminal law, even during wartime. However, as the ratification procedures had not yet got under way, for the reasons outlined earlier by her delegation, she was not in a position to say whether Poland was likely to make any reservations to the Protocol.

39. Ms. JANISZEWSKA (Poland), providing additional information on the status of the Covenant vis-à-vis Polish legislation, said that pursuant to article 91 (1) of the Constitution, international agreements ratified by Poland and published in the Journal of Laws formed part of domestic legislation and could be applied in the courts. However, when the international laws in question were not self-executing, Poland was compelled to introduce new legislation, as also provided for under article 91, of the Constitution. Since, for the most part, the provisions of international agreements could be applied directly in the Polish courts, there was rarely a need for new legislation. It was worth noting that the Constitution referred to international agreements only and not to customary law. Furthermore, in Poland, international agreements took precedence over domestic law in the event of a discrepancy between the two.

40. Responding to queries about conditions in institutions for young offenders, she said that, since the submission of the report, new legislation had been enacted with a view to reorganizing and improving living conditions in such institutions. A distinction was now drawn between correctional institutions for convicted offenders and youth shelters, where young people were detained for the duration of court proceedings. A number of guarantees were provided by the new legislation, including the right to decent living conditions, due respect for human dignity, the right to contact one's family, freedom of correspondence, the right to lodge complaints against the officials running such institutions and the right to bring proceedings against them.

41. The Government had also taken a number of steps to facilitate the implementation of legislation, such as reducing the number of youths housed in such institutions and disseminating information on their rights.

42. Ms. JANISZEWSKA (Poland), in reply to question 3 of the list of issues, said that the provisions of chapter XI of the Constitution governed measures to be taken in a state of emergency, and since 1980 no new measures had been introduced. In reply to question 4, she recalled that the Committee had reviewed only one case alleging a human rights violation in Poland and had eventually decided that no violation had occurred. In the light of that situation, there seemed to be no grounds for adopting enabling legislation to incorporate decisions of the Committee into the national legal order. The Committee's Views had been debated in the Polish parliament's Commission of Administration, which had found no reason to change existing law in that particular respect. On the other hand, the European Court of Human Rights had ruled against Poland in several cases that had been brought before it, and there was thus need to devise a procedure for amending the law to take account of those rulings.

43. In response to questions 9 and 10, she said that in 1995 changes had been introduced in the law governing pre-trial detention. The system whereby a person charged with a criminal offence was automatically placed in detention had now been abolished. Since June 1996, orders for such detention and for the extension of its duration could only be issued by the courts. The length of pre-trial detention could not exceed two years.

44. Ms. ZIORKIEWICZ (Poland), in response to question 15 (a), said that under article 10 (1) of the new Constitution, which had entered into force in 1997, a clear distinction was drawn between the powers of the Executive and the powers of the Judiciary. Under article 45, the principle of the independence and impartiality of the Judiciary was established. That article laid down that judges should be fully independent and subject only to the Constitution and the law, and that they could be appointed only by the President of Poland on the recommendation of the National Council of the Judiciary; their term of office was indefinite. Judges could only be dismissed, or moved to a different area of jurisdiction, on the basis of a court decision. They were entitled to conditions of employment and to salaries commensurate with their position. Restrictions were placed only on those of their rights considered incompatible with the independence of the Judiciary, notably the right to join political parties or trade unions.

45. In response to question 15 (b), she said that on 6 June 1997 a new Code of Criminal Procedure had been adopted; it had entered into force on 1 September 1998, replacing the Code of 1969. That marked the end of an extensive process of reform of Polish criminal law, bringing it into line with the needs of a modern democratic State. The changes made were of great importance in the context of article 14 of the Covenant. Thus, in relation to article 14, paragraph 1, only the court could decide to deprive a person of liberty, and only the judge, not the prosecutor, could decide to put a suspect under psychiatric observation. Decisions taken by the prosecutor in the course of pre-trial proceedings could now be appealed to the court, and telephone conversations could be tapped only following a court order.

46. In regard to article 14, paragraph 2, under the new Code the suspect was presumed innocent. Regarding article 14, paragraph 3, a suspect was now entitled to be informed of his rights before being questioned, including the right to contact a solicitor and to be questioned in the solicitor's presence.

The new Code had also enlarged the scope of the so-called "obligatory defence" to cover cases where the accused did not speak Polish and also cases where the judge considered that circumstances required it.

47. Replying to question 15 (c), concerning the time taken to complete criminal and civil proceedings, she said that in the district criminal courts average times had been 4.3 months in 1995, 4.8 months in 1996 and 5.1 months in 1997. In Warsaw criminal courts acting as courts of first instance, average times had been 7.1 months in 1995 and 1996 and 8 months in 1997. In Warsaw criminal courts acting as courts of second instance, the averages had been 1.4 months in 1995, 1.5 months in 1996, and 1.7 months in 1997. In civil cases in the district courts, the average time had been 4.4 months in 1995, 4.3 months in 1996 and 5.4 months in 1997. In family cases in the same courts the averages had been 2.5 months in 1995 and 1996, and 2.6 months in 1997. In civil cases in Warsaw courts acting as courts of first instance, the average time had been 9.3 months in 1995, 9.6 months in 1996, and 7.8 months in 1997; in Warsaw courts acting as courts of second instance, the averages had been 1 month in 1995, 1.3 months in 1996 and 1.6 months in 1997.

48. Replying to question 15 (e) on availability and quality of legal aid, she said that in criminal cases accused persons could only be represented by solicitors, whose qualifications must include a degree in law, an apprenticeship of 3 years and 6 months, and success in a final qualifying examination. The number of solicitors had increased over the past few years from 6,900 in 1990 to 7,260 in 1997. Accused persons could also be represented before the courts by counsellors in all cases except criminal and family cases. Counsellors must fulfil the same requirements as solicitors.

49. Mr. KRASNODEBSKI (Poland), replying to question 16, said that procedures for tapping private telephones, including the eventual destruction of recordings made, were regulated by the Ministry of the Interior in coordination with other ministries. The principle of the right to privacy was laid down in article 49 of the Constitution, and violation of that right was punishable under article 267 of the Penal Code. Tapping was only authorized in certain circumstances defined by law. It could be used by the police in pre-trial proceedings, provided that the objective was to prevent, or to discover, a serious crime. Serious crimes included crimes against the person, illegal trade, illegal possession of weapons, bribery of public officials and counterfeiting. Tapping could only be extended for a certain period, after which a second application for authorization had to be made. Information on citizens gained by clandestine police operations could only be made available to the court at the request of the prosecutor, and only in criminal proceedings.

50. Mr. LEWANDOWSKI (Poland), in response to the questions in paragraph 18 on the exercise of religious freedom, said that under article 53 of the Constitution all persons on Polish territory were guaranteed freedom of expression and freedom of worship. Everyone had the right to belong to the Church or religious association of his choice. Registration did not imply the legalization of any particular religion: it was rather intended to give legal personality to the Church or association in question in order to enable it, for instance, to contract obligations.

51. Under article 25 of the Constitution, all Polish Churches were equal, but some operated on a different legal basis from others. Thus, the Catholic Church was regulated by an international concordat, while the relationship of the State with other Churches and with religious associations was regulated by Polish law. Under article 36 of the Constitution, the public prosecutor could require investigations to be carried out into the legality of a Church or association. If the court ruled that the activities of such a body were illegal, its name must be deleted from the register.

52. Ms. DABROWIECKA (Poland), in response to question 19, said Polish press law did not impose any restrictions on the registration of newspapers and magazines: in her view, the requirement that applications for registration must be made to a court could not be said to constitute a restriction. Applications were only rejected if, for instance, they failed to supply the name of an editor and the address of a publishing office, or if they infringed copyright. If the court failed to deal with the application within a period of 40 days, the applicant was entitled to commence publication.

53. The Radio Broadcasting and Television Act required that programmes should respect the religious beliefs of their listeners, especially Christian values. The word "especially", while reflecting the special place of Christian culture and tradition in Polish society, was intended only as an example. In 1994 the Constitutional Court had ruled that that requirement did not in fact amount to censorship. It had also ruled that the requirement that Christian values should be respected did not imply any obligation to propagate them.

54. Polish laws prohibiting the defamation of public authorities had often been criticized as an infringement of the right to free speech. Under the new Penal Code, sentences for that offence had been reduced from 8 to 2 years, and only defamation of the President or of the constitutional organs of the Republic was now considered punishable. Between 1990 and 1996, only 12 persons had been sentenced for the offence. Even under the old Code, the Supreme Court had ruled that the law could not be interpreted as limiting rights defined under international instruments.

55. Ms. KOWALSKA, replying to question 21, said that a new bill setting up the long-awaited Ombudsman for Children's Rights had recently been introduced. It was hoped that the Ombudsman would begin work 1 January 2000.

56. Ms. DABROWIECKA (Poland), said that under article 60 of the Constitution access to public service in Poland was guaranteed for all. There were no requirements for entering the service based on political affiliation or gender, which would be contrary to the law; candidates were only required to be Polish citizens with no criminal record and to be of high moral standing. Poles had the right to vote from the age of 18 and the right to stand for election from the age of 21.

57. Replying to question 23, she said that the new Constitution guaranteed equal treatment for all by the public authorities and prohibited discrimination of any kind. Similar provisions were also included in specific laws, such as the Law on Freedom of Conscience, the Labour Code and the Law on Education. The new Penal Code specifically prohibited acts of violence or

threats against persons belonging to minority groups or holding minority political views, and also outlawed all forms of hate propaganda on grounds of ethnicity or race. Sixteen persons had been sentenced for ethnically-motivated crimes between 1992 and 1994 compared with 4 and 3, respectively in 1995 and 1996, and pre-trial proceedings in 15 such cases had been reported for 1998. Prejudice-related crimes, whose overall number was minimal, were strongly condemned by public opinion, the media and the public authorities. Further details were to be found in Poland's August 1997 report to the Committee on the Elimination of Racial Discrimination.

58. Mr. LEWANDOWSKI (Poland), replying to question 24, said that Poland did not keep statistics on citizens who declared themselves to be members of a national minority; the figures he could supply were therefore based on estimates by the Parliamentary Commission for Minority Affairs. At present, there were between 900,000 and 1,095,000 Polish citizens, or 2.3 to 2.9 per cent of the population, who considered themselves to be members of national minorities. That total included between 350,000 and 450,000 Germans, 250,000 to 300,000 Ukrainians and Wends, 250,000 to 300,000 Ruthenians, 20,000 to 25,000 Roma, 15,000 to 20,000 Lithuanians, 10,000 to 15,000 Slovaks and 8,000 to 10,000 Jews. There were also between 2,000 and 3,000 Czechs, 8,000 Armenians, 2,000 Tatars and about 5,000 Greeks and Macedonians. All those minorities had the right to their own educational and cultural institutions and organizations for the preservation of their religious identity, as well as the right to participate in the decision-making process concerning their cultural identity. They currently had about 220 organizations, including local branches, and published a large number of newspapers, many of which were subsidized by the Ministry of Culture. It should be noted that the 5 per cent rule in the Electoral Law could be derogated from in the case of minority candidates. At present there were two members of parliament representing the German minority, as well as several others belonging to ethnic minorities who represented different political parties. All the above rules applied equally to the Roma, and a special educational programme for children belonging to that minority had been in operation since 1992.

59. Ms. JANISZEWSKA (Poland), replying to the first part of question 25, said that the text of Poland's third periodic report had been issued by the Ministry of Justice in the form of a general publication, including a summary of the proceedings before the Human Rights Committee; the same procedure would be followed in respect of the present report. The Committee's recommendations had been forwarded for action to the appropriate ministries and other bodies. Replying to the second part of the question, she said that human rights subjects were being increasingly included in educational syllabuses. Regular courses on human rights were provided at universities and in vocational training and special courses on human rights were given to groups of public officials, judges, Ministry of Justice staff and police cadets. By a decision taken in December 1998, the Chief of Police had appointed a special official to take charge of the incorporation of human rights subjects in the training of police and prison officers, including medical personnel.

60. The CHAIRPERSON invited members to ask additional questions on the second part of the list of issues; because of the shortage of time, the delegation could, if it so wished, provide its answers in writing by midday on 23 July.

61. Mr. BHAGWATI expressed appreciation of the steps taken to strengthen human rights in Poland since the consideration of the (third) periodic report, and remarked that it would have been of considerable help to the Committee if information in the report under consideration had been updated in writing. In particular, if a citizen wanted to challenge a domestic law on the grounds of its inconsistency with the Covenant, could he now approach the Constitutional Court directly? If not, what other court was competent to deal with such matters?

62. Noting that, according to paragraph 37 of the report, the State of Emergency Act of 5 December 1983 still remained in force, he asked whether the Act contained any provisions which derogated from any right under the Covenant.

63. With regard to the composition of the Judiciary, he asked whether judges appointed under the old regime had been replaced and, if some of them remained in office, what steps had been taken to reorient their attitude towards human rights. Information concerning the appointment of judges provided in the core document (HRI/CORE/1/Add.25/Rev.1) differed considerably from that in the fourth report, possibly because of changes which had taken place in the meantime. What was the composition of the National Council of the Judiciary? And what was the basis for the Council's recommendations concerning the appointment of judges to the President? Were those recommendations binding on the President? What authority could hold inquiries into any misconduct by judges with a view to their removal? What disciplinary proceedings could be taken in such a case? And how many judges had been removed during the past few years as a result of a disciplinary inquiry?

64. Referring to the question of conscientious objection (Covenant, art. 18), he said that, according to information received from NGOs, the draft law amending the present law on military service, already adopted by the Diet and currently before the Senate, reduced the length of alternative service from 24 to 21 months and that of military service from 18 to 12 months. The striking disproportion between the two sets of figures suggested that conscientious objectors were being punished for their views, which would be contrary to resolutions of the Commission on Human Rights and the European Parliament. What steps were being taken to amend the draft law in that respect? Furthermore, he understood that applications for alternative service must be made before receiving call-up papers. Since conscientious objection could arise at any time, including during military service, that part of the law, too, should be amended.

65. With regard to article 14, he said that according to NGO reports, the fact that litigants lived a long way from the nearest court in some parts of Poland, as well as lack of courtrooms in many places, rendered access to the courts very difficult and accounted for serious delays in judicial proceedings. He had been pleased to hear from the delegation that the length

of proceedings had been substantially reduced, but wondered what steps had been taken to improve the court infrastructure. Lastly, he asked for information on arrangements for free legal aid to needy persons.

66. Ms. CHANET, referring to article 9, noted that an arrested person could be held in police custody for 48 hours. Before what judge were such persons brought at the end of that period? And were they held incommunicado during the period or could they have contacts with the outside world, including with a lawyer and, if necessary, a doctor? She gathered that if, at the end of the 48 hours, a judge decided to place the arrested person in pre-trial detention, such detention could not last longer than two years. But what if the eventual sentence was for less than two years? Were there any possibilities of periodic review for pre-trial detainees? The Committee would need to see the text of the new Code of Criminal Procedure.

67. She was concerned to note that the Constitution contained no provision for rights under article 14 of the Covenant except for the presumption of innocence. Noting that article 184 of the Constitution contained a provision concerning the removal of judges, she asked who was the judge that judged other judges. Referring to information just given by a member of the delegation concerning the length of judicial proceedings, she remarked that it was strikingly inconsistent with figures appearing in NGO reports, and asked for further explanations. Lastly, referring to article 18, she noted that all the Churches reported to have established a relationship with the Polish State were Christian ones, and asked for information about the status of non-Christian religions and, especially, the Jewish faith.

68. Mr. AMOR, also referring to article 18, asked whether and to what extent the Polish State was influenced by the Roman Catholic religion, especially regarding the status of women, contraception and abortion. Noting that Churches and religious associations in Poland could be charged with involvement in illegal activities, he asked whether any Polish court had had occasion to define the meaning of the concept of religion. Did it apply to all creeds without exception, including new religious movements? With regard to the rights of conscientious objectors, he associated himself with Mr. Bhagwati's comment that the draft law providing for 21 months of alternative service as against 12 months of military service appeared to have a punitive character.

69. Mr. ZAKHIA asked for figures showing recent developments with regard to the representation of women in government, the liberal professions, universities, etc. Had any quotas been introduced in that respect? He would also appreciate information about any measures adopted to protect women, in particular against the white-slave trade in or through Polish territory. Lastly, he asked whether equality of rights existed between children born in and out of wedlock.

70. Mr. POCAR, recalling that the third periodic report had indicated that Polish military courts would in future try only military offences, asked whether that change had in fact taken place. On the question of minorities, he noted that reference had been made only to national or ethnic minorities but not to linguistic or religious ones. He would appreciate more information about the protection of linguistic and religious minorities as such, and in

that connection drew the delegation's attention to the Committee's general comment 23 on article 27, and in particular paragraph 5 (2) of the general comment.

71. The CHAIRPERSON thanked the Polish delegation and expressed the hope that its replies in writing to the additional questions would be submitted in due course.

72. Mr. BORUSEWICZ (Poland) thanked members for their interest and promised that all their comments would receive the necessary attention from his Government, which was eager to cooperate closely with the Committee and with all NGOs active in the field of human rights.

The meeting rose at 6.15 p.m.